

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

* * * * *

*

COMMONWEALTH OF MASSACHUSETTS,

*

*

v.

* Docket No. 2282CR00117

*

KAREN READ.

*

*

* * * * *

BEFORE THE HONORABLE BEVERLY CANNONE
THURSDAY, JUNE 20, 2024
TESTIMONY OF NICHOLAS GUARINO

APPEARANCES:

For the Commonwealth:

BY: ADAM LALLY, A.D.A.
LAURA MCLAUGHLIN, A.D.A.

For the defendant:

BY: DAVID YANNETTI, ESQ.
ALAN JACKSON, ESQ.
ELIZABETH LITTLE, ESQ.

Dedham, Massachusetts
Room 25

Christine D. Blankenship, CVR
Court Reporter/Transcriber

I N D E X

WITNESS:	DIRECT	CROSS	REDIRECT	RECROSS
----------	--------	-------	----------	---------

Nicholas Guarino				
(By Mr. Lally)	19		141	
(By Mr. Yannetti)		79		

Exhibits:	Page:
-----------	-------

For identification:

LLL Document Regarding Phone Call from Michael Proctor	76
--	----

In evidence:

633 Call Log	22
634 Cellebrite Extraction - Karen Read/Erin O'Keefe Call Log	23
635 Cellebrite Extraction - John O'Keefe/Kerry Roberts Call Log	24
636 Cellebrite Extraction - Karen Read Chat Log	25
637 CD - John O'Keefe's Voicemails	32
638 Overview of Plotted Points from Axiom	58
639 Map of Plotted Points from Cellebrite	68
640 Printout from John O'Keefe's Phone	120

1 (Court in session at 9:25 a.m.)

2 (Defendant is present with counsel.)

3 THE CLERK: May I call the case, Your Honor?

4 THE COURT: Yes, please.

5 THE CLERK: For the record before the Court is
6 Commonwealth versus Karen Read, 2282CR00117. The
7 parties are present. The jury is not present. The
8 counsel has asked to see Judge Cannone.

9 THE COURT: Okay. Did you want to see me at
10 sidebar?

11 MR. YANNETTI: We can do it at sidebar or in open
12 court. It's up to the Court.

13 THE COURT: Why don't I see you up here and see
14 if ...

15 (Sidebar commences:

16 THE COURT: Good morning.

17 MR. YANETTI: Good morning, Your Honor. Mr. Lally
18 on Tuesday provided basically a list and the documents
19 that he intends to introduce through or use through
20 Trooper Guarino.

21 THE COURT: Okay.

22 MR. YANETTI: There's one entry, in particular,
23 that we are objecting to.

24 THE COURT: Do you have it with you? Why don't you
25 go grab it.

1 MR. YANETTI: He has it. I need to get my reading
2 glasses up here.

3 THE COURT: Okay. Maybe you keep them in your
4 pocket.

5 MR. YANETTI: I should, yeah. But then they'd get
6 crushed, Your Honor.

7 THE COURT: All right. So, Mr. Lally, why don't you
8 tell me what this is.

9 MR. LALLY: So, Your Honor, essentially what I'm
10 looking --

11 THE COURT: You need to keep your voice up.

12 MR. LALLY: Sure. What this is --

13 THE COURT: Especially flipping the pages near the
14 microphone drives the court reporter crazy.

15 MR. LALLY: My apologies. Your Honor, what this is
16 is a part of the extraction report from the defendant's
17 phone was a web search history. In particular, there
18 are web searches that the defendant does on the
19 afternoon of the 29th in respect to -- I mean, the one
20 in particular that I'm looking for is essentially DUI
21 lawyers near me.

22 THE COURT: Okay.

23 MR. LALLY: So what I had done is I had sent at
24 least to counsel and to the Court just to flag it that
25 I want to avoid a lengthy sidebar conference with the

1 jury in the room, understanding that I think it's
2 admissible. I think it goes, you know, as far as what
3 the Court has to consider is whether it's more
4 probative than overly prejudicial. I'm assuming
5 counsel would -- assuming that counsel would object to
6 it, I just wanted to raise it for the Court before
7 we --

8 THE COURT: Okay. I appreciate that. What's your
9 objection?

10 MR. YANETTI: So my objection, Your Honor, is in
11 part based on the timing of the search because no such
12 search was done until she received a call from Trooper
13 Michael Proctor. Once she received a call from the
14 state police, she didn't Google criminal defense
15 attorneys or murder defense attorneys or homicide
16 defense attorneys. She googled DUI defense attorneys
17 after having heard from the police. It did not lead to
18 her hiring me. She didn't find me in that search, and
19 it was only done after she got contact from the police,
20 which, you know, you can get a call from the state
21 police and not only is it your right to be represented,
22 but, you know, anybody with half a brain would --

23 THE COURT: I'm familiar with it.

24 MR. YANETTI: Of course. Of course.

25 THE COURT: All right. So I'm going to keep it out

1 in your case in chief.

2 MS. MCLAUGHLIN: Your Honor, if I may.

3 THE COURT: Yep.

4 MS. MCLAUGHLIN: I do have cases to support its
5 admission as the probative value. I do think in this
6 case it seeks the prejudicial value. It's not a
7 typical case where the defendant claims they committed
8 an accident. The defense is that the defendant's
9 vehicle never struck John O'Keefe. It goes to
10 rebutting the *Bowden* defense. It goes to rebutting the
11 improprieties of what the defense claims of the
12 investigation. It goes against the allegation that the
13 defendant has been framed. In these circumstances, the
14 probative value does exceed the prejudicial value, and
15 I do have two cases to support the admission of it from
16 the Commonwealth's standpoint.

17 Further, at the time of the search, the defendant's
18 illegally intoxicated that morning. It goes to her
19 state of mind as she begins to sober up in the
20 afternoon, perhaps understanding what may have
21 occurred. So I do think it's relative and highly
22 probative to her state of mind at the time the search
23 was conducted. Further, it's prior to her having sat
24 down and voluntarily giving that interview to the state
25 police.

1 THE COURT: (Indiscernible.)

2 MR. YANETTI: Not really. What relevance is it
3 that somebody intends to defend their presumption of
4 innocence? What is the inference that the Commonwealth
5 is asking this jury to draw? They're asking this jury
6 to draw that the police contact her. She was out the
7 previous night, and they're asking to infer guilt or
8 consciousness of guilt by virtue of the fact that she
9 seeks out representation.

10 THE COURT: Hold on one second.

11 (The Court and clerk confer.)

12 THE COURT: Go ahead. And continue, Mr. --

13 MR. YANETTI: Well, no, you know, I'm just reading
14 over the bench here and I noticed first of all that
15 at --

16 THE COURT OFFICER: Quiet, folks.

17 MR. YANETTI: -- at least one of the cases deals
18 with this the standard of a substantial risk of a
19 miscarriage of justice in terms of how they decide the
20 case. I would like an opportunity to review those
21 cases.

22 THE COURT: Sure. All right. So we can address
23 this.

24 MR. YANETTI: If we could take a break --

25 THE COURT: At the morning break. So, again, Ms.

1 McLaughlin, tell me the reasons rebutting the *Bowden*
2 defense, tell me the reasons that you think this is
3 because, as you know, under that footnote in *Samia*, I
4 have to --

5 MS. MCLAUGHLIN: Yes, Your Honor.

6 THE COURT: -- make a little bit more of a record
7 here.

8 MS. MCLAUGHLIN: We think this is an unusual
9 circumstance where the defense has been that the
10 defendant's vehicle never struck John O'Keefe, that
11 she's being framed for these charges, that there's no
12 evidence of any type of motor vehicle offense or any
13 intent to commit any of these crimes.

14 THE COURT: Slow down.

15 MS. MCLAUGHLIN: Essentially someone else -- what
16 the defense has represented is that she's being framed
17 and perhaps a dog is what inflicted the injuries.
18 These -- this Google search rebuts the defense of one,
19 she's been framed, it goes to her state of mind. It
20 also rebuts the *Bowden* defense that as the defendant
21 has claimed the police did not do a proper search.
22 They did not search -- investigate any other
23 individuals. It goes to the fact that there is
24 compelling evidence that the defendant is the only one
25 culpable for John O'Keefe's death, and her state of

1 mind hours after becoming aware that John has passed.

2 THE COURT: So, Ms. McLaughlin, what I would like
3 from you is a proposed instruction as to what I tell
4 the jury, and the typical bad acts that can only be
5 heard for this particular purpose. You're asking me to
6 tell them that I have not decided yet whether I'm going
7 to.

8 MR. YANETTI: If I could have an opportunity to be
9 heard.

10 THE COURT: Of course. I want you to read the
11 cases. I'm familiar with Keon(ph) but I want to read
12 the other.

13 MR. LALLY: Sure.

14 THE COURT: So this isn't something any of us
15 should rush into, so I really appreciate you finding
16 it, Mr. Lally. All right. So I'd like you to tell me
17 what specifically you would like me to tell the jury
18 that they consider this for. So you're not even saying
19 consciousness of guilt at this point, right?

20 MS. MCLAUGHLIN: I am. I am. It does go for
21 consciousness of guilt.

22 THE COURT: All right. So if I give this
23 instruction and if I say it goes to consciousness of
24 guilt, I'd like the defense to let me know whether they
25 would like me to give a consciousness of guilt

1 instruction at the same time. So this is all -- this
2 is what I want you all to do so we can have another
3 discussion on this.

4 MR. LALLY: Sure.

5 THE COURT: And this was this was the extraction of
6 the phone, so the actual -- the defense has had this.

7 MS. MCLAUGHLIN: The defense had it longer than the
8 Commonwealth has had access to this, so I would say
9 they've had the information for approximately two
10 years.

11 MR. YANETTI: We haven't raised that issue in our
12 objection.

13 THE COURT: No. That's what I was wondering.

14 MR. YANETTI: Right, of course.

15 THE COURT: As I was told it might have been a
16 discovery violation that you need to be here. So what
17 is the date and time of the search? 1/29, but what
18 time?

19 MS. MCLAUGHLIN: January 29, 2022.

20 THE COURT: Right. But what time?

21 MR. LALLY: The 1:24 p.m.

22 THE COURT: And, Mr. Yanetti, you say that is after
23 Proctor has called her?

24 MR. YANETTI: I believe it's about five minutes
25 later.

1 THE COURT: When he called her or he showed up?

2 MR. YANETTI: No, he calls her at 1:19. I believe
3 that was the time, 1:19.

4 THE COURT: All right. So get all this for me if
5 you can, too.

6 MR. YANETTI: Of course.

7 THE COURT: We can take more time. We can take a
8 longer break, or, you know, an initial break. I think
9 this sort of falls under Ms. Little and Ms. McLaughlin
10 to just go through everything. You seem to be the ones
11 that have immediate access to the records to finding
12 these things out. So if you could just find that time,
13 the time Proctor called her. I don't know if that's in
14 evidence now.

15 MR. YANETTI: Not yet.

16 THE COURT: About Proctor calling her at that time?

17 MR. YANETTI: Correct. Not yet. It's not yet in
18 evidence, but it will be.

19 THE COURT: All right. Through who?

20 MR. YANETTI: Through Guarino.

21 THE COURT: Oh, okay. So you're going to touch
22 upon that anyway regardless of what this is?

23 MR. YANETTI: Only for the purpose of time of that
24 call and there were no Google searches prior to him
25 calling.

1 THE COURT: Oh, even if I don't admit this you're
2 going to do that?

3 MR. YANETTI: Well, not if it causes the Court to
4 admit that.

5 THE COURT: No, it doesn't cause me to.

6 MR. YANETTI: Or even if it militates in that
7 favor, I don't see why it would.

8 THE COURT: No, I just wanted clarity whether you
9 -- you say it's not in --

10 MR. YANETTI: If I could just --

11 THE COURT: Yeah.

12 (Counsel confer.)

13 MR. YANETTI: So I will defer to my cocounsel and
14 report that the only reason we would need that in is if
15 they try to bring it in.

16 THE COURT REPORTER: They try to what? I'm sorry.

17 MR. YANETTI: The other search in, the 1/24.

18 THE COURT: That's not exactly what you said.

19 MR. YANETTI: I'm sorry.

20 THE COURT: Okay. So that's a different animal and
21 you cocounsel caught it, so it's there.

22 MR. YANETTI: Yes.

23 THE COURT: All right. So we will address those
24 not before the break, and if you -- how much longer do
25 you have with him?

1 MR. LALLY: Roughly an hour.

2 THE COURT: Okay. All right. So we'll make sure
3 we take the break.

4 MR. LALLY: I'll alert the Court if I have nothing
5 left but that.

6 THE COURT: There is a slight possibility, maybe
7 more than a slight, that what I have scheduled tomorrow
8 afternoon will be continued, then maybe we can do a
9 full day which would be great. So we don't know.
10 Unless you can't. Unless your witnesses can't based on
11 what we have, and if there's a single juror that made
12 plans, then we won't.

13 MS. LITTLE: We probably -- I probably need a
14 ruling. We probably just need a ruling in terms of our
15 experts because that's the bulk -- a large bulk of our
16 witnesses to see who we can get here tomorrow, if
17 that's the case.

18 THE COURT: Did you not plan on having anybody here
19 tomorrow?

20 MS. LITTLE: No, we did.

21 MR. YANETTI: I think I have (indiscernible) here
22 tomorrow. He's our second witness.

23 MR. JACKSON: And if I may?

24 THE COURT: Yes.

25 MR. JACKSON: As it pertains to Dr. Russell, she

1 would be right after that, so that's the only thing --

2 THE COURT: All right. So I --

3 MR. JACKSON: We could make arrangements to get her
4 here quickly. I just need to sort of know.

5 THE COURT: All right. And she's local now, right?

6 MR. JACKSON: New York-ish.

7 THE COURT: All right. So I will say just briefly
8 what my rulings are now on what happened in the voir
9 dire. I'll do that in open court now, and we can line
10 up the jurors.

11 Are we all set on this issue?

12 MR. JACKSON: For now.

13 THE COURT: And I appreciate you flagging it and I
14 appreciate you giving me copies of the cases and we'll
15 take a decent morning break.

16 MR. JACKSON: And, Your Honor, just -- I don't
17 expect a ruling right now, but I am going to ask the
18 Court pretty quick. I'm putting the Court on notice in
19 closing argument we're getting to that direction, and I
20 need to know for my purposes kind of how much time
21 we're going to have.

22 THE COURT: An hour. No more than an hour. No
23 more than an hour. I've never let more than an hour.
24 Massachusetts one hour is the limits it seems, and the
25 jury's heard it. They understand.

1 MR. JACKSON: Even with a case that complex? I
2 wasn't going to ask for four hours. I was going to ask
3 for two.

4 THE COURT: Not two hours, one hour. I have had
5 cases that are more complex that have been one hour.
6 One hour. It's a challenge for a lawyer, but --

7 MR. JACKSON: It is. In this case, it is.

8 THE COURT: I know these lawyers can do it. That's
9 where I'm at. So we can discuss it again when we have
10 the charge conference, but that's where I'm at.

11 MR. JACKSON: Okay.

12 THE COURT: Is the Commonwealth looking for two
13 hours as well?

14 MR. LALLY: No.

15 MR. JACKSON: You're not.

16 THE COURT: Because you're used to an hour.

17 MR. JACKSON: You're not helping me, Adam.

18 MR. LALLY: Sorry.

19 THE COURT: All right. So we'll make a -- quick.
20 I'm going to line the jurors up. I'll let you know
21 where I stand as of (indiscernible).

22 MR. LALLY: Thank you, Your Honor.
23 end of sidebar.)

24 THE COURT: All right. We can line them up.

25 So moving on to the voir dire motion the other day

1 or the voir dire hearing in response to the
2 Commonwealth's renewed motion for reciprocal discovery
3 and motion to exclude defendant's expert, Dr. Marie
4 Russell.

5 So the Commonwealth was alleging violations of Rule
6 14's reciprocal discovery requirement, and the
7 Commonwealth asked for exclusion of Dr. Russell. I did
8 find, and do find, that there was a violation of the
9 reciprocal discovery obligations of the defendant's. I
10 was looking for a remedy. You called it a sanction, Mr.
11 Jackson, but I called it a remedy. And I did tell
12 Counsel, as you know, at sidebar a couple of times at
13 least last week, that I did not want to exclude the
14 testimony if I did not have to. So we had the voir
15 dire, and I'm satisfied that the voir dire provided the
16 Commonwealth the information that the defense should
17 have provided the Commonwealth.

18 So I am going to allow Dr. Russell to testify, but
19 her testimony is very limited, and I think you even
20 sort of acknowledged it the other day, Mr. Jackson. So
21 she'll be allowed only to opine whether or not the
22 marks on John O'Keefe's arm were the result of an
23 animal attack. I find that she is a medical doctor.
24 She's an experienced ER doctor, albeit, you know,
25 several years ago since she's worked in that capacity,

1 but that she does have special -- specialized knowledge
2 in that field that may assist the jury in this regard.
3 But she can't testify as an expert on police activity.
4 There'll be none of that, and she will not be able to
5 testify as to what the injuries are inconsistent with.
6 She cannot testify that they're inconsistent with
7 having been struck by a vehicle, road rash, scratches
8 from broken glass, or taillight matter ,or any other --
9 anything else. So that's beyond the scope of what she
10 can testify.

11 The second part of the Commonwealth's motion.
12 Commonwealth argued that they were not provided
13 reciprocal discovery regarding the biomechanical
14 engineers and others, but specifically ARCCA, Dr. Wolfe
15 and Dr. Rentschler, and I do find, though, I understand
16 why the defense didn't respond, but it is a violation
17 of Rule 14. So we had this voir dire. The Commonwealth
18 was looking to see what each person did, their
19 independent opinion, what their testimony would be, and
20 whether they were qualified to render the opinions that
21 they qualified. So from what I heard the other day, Dr.
22 Wolfe can testify to what he -- his involvement. Dr.
23 Rentschler, though, I have some concerns. It's clear
24 to me that in Massachusetts biomechanical engineers are
25 not qualified to testify as to medical causation of an

1 injury; only an MD can do that. So I'm going to reserve
2 ruling on the rest of his testimony. There are certain
3 things he can testify, and I'll hear you again before
4 he testifies next week. Let's just proceed with the
5 trial today.

6 So --

7 MR. JACKSON: Yes, Your Honor, Thank you.

8 THE COURT: Okay. So those are my rulings. Are
9 they clear, Mr. Jackson?

10 MR. JACKSON: Yes, they are.

11 THE COURT: Are they clear, Mr. Lally?

12 MR. LALLY: Yes, Your Honor.

13 THE COURT: Okay. All right. So are they ready to
14 come in? Thank you.

15 (Jury in.)

16 THE COURT: All right. Good morning again, Counsel
17 and Ms. Read. Good morning, jurors.

18 So we appreciate that you were patient, that we got
19 a lot of work done this morning before you came out.
20 It's cool in here now. As long as you're away from the
21 sun from the windows, it should be fine. The county has
22 done a really terrific job of making sure that they got
23 this building nice and cool for us today, so I
24 appreciate what the county's done as well.

25 I do have to ask you those three questions. Were

1 you all able to follow my instructions and refrain from
2 discussing this case with anyone since we left on
3 Tuesday?

4 THE JURY: Yes.

5 THE COURT: Everyone said yes, nodded
6 affirmatively.

7 Were you also able to follow my instructions and
8 refrain from doing any independent research or
9 investigation into this case?

10 Everyone said yes or nodded affirmatively.

11 Did anyone happen to see, hear, or read anything
12 about this case since we left here on Tuesday?

13 All right. Thank you very much. So may we call the
14 witness, please.

15 Trooper Guarino, please.

16 NICHOLAS GUARINO, sworn

17 THE WITNESS: Good morning, Your Honor.

18 THE COURT: Good morning, Trooper. Whenever you're
19 ready, Mr. Lally.

20 MR. LALLY: Thank you, Your Honor.

21 **DIRECT EXAMINATION**

22 **BY MR. LALLY, CONTINUED:**

23 Q Good morning, sir.

24 A Good morning.

25 Q Taking you back to the other day, I had been

1 showing you -- so you had testified about some
2 extraction reports that you had conducted from the
3 various forensic extractions that you had done
4 pertaining to both the defendant's phone and Mr.
5 O'Keefe's phone, correct?

6 A Yes, sir.

7 MR. LALLY: And, Your Honor, may I approach?

8 THE COURT: Yes.

9 Q Trooper, showing you a document. I'd ask you to
10 review that and look up when you're finished.

11 A Okay. (Witness complies.) Okay.

12 Q Do you recognize that, sir?

13 A Yes, it's --

14 Q What do you recognize that to be?

15 A Sorry. Karen Read's phone call logs.

16 Q And that's specifically from January 28, and
17 January 29; is that correct?

18 A Yes, it starts the -- yep, 28th at 12:33 to -- I'm
19 sorry -- the 29th at 12:33 to 3:19 p.m. on the 29th.

20 Q And just for ease of reference, does it sort of go
21 in descending order as far as the earlier calls are on
22 the last page and then the more recent calls are on the
23 first page?

24 A Yes, that's correct.

25 MR. LALLY: May I approach, Your Honor?

1 THE COURT: Yes.

2 MR. LALLY: Commonwealth would seek to introduce
3 them as the next exhibit.

4 MR. YANNETTI: May we approach, please?

5 THE COURT: Okay.

6 (Sidebar commences:

7 MR. YANETTI: My main concern and I was unable
8 review it completely, but it does it include any calls
9 to potential representation. Because I know my client
10 had reached out for Jack Bryant at one point before she
11 located me. I don't know if that call is in there or
12 not.

13 MR. LALLY: So this is the extraction report data
14 we received. So all of that, pursuant to the attorney
15 general's review of it, should be excised. Regardless,
16 all contacts are as far as names or anything are
17 excised from this copy that's going to the jury.

18 MR. YANETTI: Okay. Why can't this end at a
19 certain time on January 29? Why does it have to go
20 into the afternoon past 1:19 p.m.?

21 MR. LALLY: I --

22 MR. YANETTI: Just to be frank, Judge. I'm trying
23 to prevent any possibility of prejudice here. [REDACTED]

24 **Court Order: Jurors or Juror Issue**
25

Court Order: Jurors or Juror Issue

THE COURT: So let's let this in. You can find Jack Diamond's phone number. If it's in here let me know and we'll take it out.

MR. YANETTI: Sounds good.

MR. LALLY: And, Your Honor, I am not looking to publish this for the jury or anything like that.

THE COURT: But you're putting it in and it's --

MR. LALLY: No, no, no. I'm just saying there's sufficient time that there's additional redactions that counsel wants or whatever, that's fine.

MR. YANETTI: That's fine. Yep.

THE COURT: Okay.

end of sidebar.)

THE COURT: That will be our next exhibit.

(Whereupon Exhibit No. 633, Call Log, was entered as an exhibit.

MR. LALLY: May I approach, Your Honor?

THE COURT: Yes.

Q Showing you another document, sir. Do you recognize that?

A Yes.

Q What do you recognize that to be?

1 A This is Karen Read and Kerry Robert's call log.

2 Q And that's an extraction report that you created
3 from the defendant's phone; is that correct?

4 THE COURT: Keep your voice up, Mr. Lally, for the
5 jurors.

6 MR. LALLY: Yes, Your Honor. May I approach, again,
7 Your Honor?

8 THE COURT: Yes.

9 MR. LALLY: Commonwealth would seek to introduce
10 and admit as the next exhibit.

11 THE COURT: Okay.

12 MR. YANNETTI: No objection.

13 (Whereupon Exhibit No. 634, Cellebrite Extraction -
14 Karen Read/Kerry Roberts, was marked as an exhibit.)

15 MR. LALLY: May I approach again, Your Honor?

16 THE COURT: Yes.

17 Q Showing you another document, sir, if you recognize
18 that?

19 A Yes.

20 Q What do you recognize that to be?

21 A This is the texts from John O'Keefe and Chris
22 Albert.

23 Q And again, that's an extraction report that you
24 created from Mr. O'Keefe's phone; is that correct?

25 A Yes, it is.

1 MR. LALLY: May I approach again, Your Honor?

2 THE COURT: Yes.

3 MR. LALLY: Commonwealth would seek to introduce
4 them as the next exhibit.

5 MR. YANNETTI: No objection.

6 THE COURT REPORTER: Mr. Lally, you really do need
7 to keep your voice up.

8 MR. LALLY: I'm sorry.

9 (Whereupon Exhibit No. 635, Cellebrite Extraction -
10 John O'Keefe/Chris Albert Chat Log, was marked as an
11 exhibit.)

12 MR. LALLY: And may I approach -- oh, I'm sorry.
13 My apologies. May I approach again, Your Honor?

14 THE COURT: Yes.

15 Q Showing you another document, sir. Ask you to look
16 at that, look up when you're finished.

17 A (Witness complies.) Yes.

18 Q Do you recognize that, sir?

19 A Yes. This is Karen Read's the full chat report of
20 everyone from the 29th on.

21 MR. LALLY: May I approach, Your Honor?

22 THE COURT: Yes.

23 MR. LALLY: Commonwealth would seek to introduce
24 and admit as the next exhibit.

25 MR. YANNETTI: We have no objection.

1 THE COURT: Okay.

2 (Whereupon Exhibit No. 636, Cellebrite Extraction -
3 Karen Read Chat Log, was marked as an exhibit.)

4 MR. LALLY: I'm sorry. May I have the last one? May
5 I approach the witness, Your Honor?

6 THE COURT: Yes.

7 Q Returning to you what's now been marked is Exhibit
8 636.

9 MR. LALLY: Your Honor, with the Court's
10 permission, may I publish a portion of this to the
11 jury?

12 THE COURT: Yes.

13 Q Now, sir, I'm going to direct your attention to the
14 exhibit before you that's now been marked as Exhibit
15 636, and Ms. Gilman, if I could -- I'm sorry -- Trooper
16 Guarino and Ms. Gilman, if I could direct your
17 attention to page 3.

18 And do you have that before you, sir?

19 A Yes, I do.

20 Q And on page three, who is that a conversation with?

21 A Laura Sullivan.

22 Q And that conversation essentially continues from
23 page 3 to page 6; is that correct?

24 A Yes, it does.

25 Q And, sir, I'm going to ask you similar to what I

1 asked you the other day, if you could read from that
2 conversation in its entirety indicating who's speaking
3 or the content of what's being said and the date and
4 time associated with that message.

5 A Yes. First message from Laura Sullivan at 12:45
6 p.m. on January 29, 2022. "Karen, it's Laura. Please
7 call me." Karen says, "Hi, Laura," at 1:07 p.m. Karen
8 then says, "John passed away," 1:07 p.m. Laura, "Karen,
9 I'm shaking. I'm so sorry." At 1:07 Karen says, "We
10 found him outside in the snow at 5:00 a.m.," 1:07 p.m.
11 "Laura, I can't stop crying," 1:07 p.m. again. "Karen,
12 thank you," 1:07. And Laura finally says, "Why was he
13 out there," 1:07 p.m. Oh, sorry. Karen replies, "He
14 left the party we were at. I don't know what time. I
15 didn't even go in. I went to bed." That's at 1:08 p.m.
16 Laura says, "Oh my god," 1:08, "Karen, my heart breaks
17 for," excuse me, "my heart breaks for everyone," at
18 1:09 p.m.

19 Q Thank you, sir.

20 Q So when those text messages from Ms. Sullivan in
21 the afternoon, of the 29th, she indicates to Ms.
22 Sullivan that they located Mr. O'Keefe around 5:00
23 a.m.; is that correct?

24 A Yes, it is.

25 Q Now, sir, if I could direct your attention to page

1 28 to 29 of those messages in the exhibit before you.

2 And page 28 to 29, who is that conversation with?

3 A This is Karen Read and John O'Keefe.

4 Q And these are conversations from the early --

5 THE COURT REPORTER: I'm just having trouble.

6 Q These conversations on page 28 through 29 of this
7 exhibit occur in the early morning hours of January 29,
8 correct?

9 A Yes, that's correct.

10 Q And if you could, sir again, please read as far as
11 who's speaking, what they're saying, and what date and
12 time these are being sent?

13 A Yes. Karen Read to John O'Keefe at 12:55 a.m. on
14 the 29th, "I'm going home," followed by I'll -- excuse
15 me -- "see you later."

16 At 1:02 a.m. she texts John again saying, "Your
17 kids are cucking alone." And at 1:04 a.m. she says,
18 "I'm back in Mansfield. The kids are home alone."

19 Q Thank you.

20 MR. LALLY: May I approach just to retrieve?

21 THE COURT: Yes.

22 MR. LALLY: May I have a moment, Your Honor?

23 THE COURT: Yes.

24 MR. LALLY: May I approach?

25 THE COURT: Yes.

1 Q Sir, I'm showing you two documents, and Mr.
2 Officer, we can put the lights back.

3 Do you recognize each of those documents, sir?

4 A Yes. One is Karen Read call log report. Just want
5 to confirm which one this is -- for John O'Keefe, and
6 then John O'Keefe's full call log report on the --
7 looks like the 29th.

8 Q Now, sir, if I could direct your attention to the
9 defendant, Ms. Read's call log reports, and
10 specifically, if I could draw your attention to what's
11 been -- they're enumerated as far as certain box
12 numbers, correct, one through whatever it goes on the
13 last page?

14 A Yes.

15 Q If I could direct your attention to boxes 113 and
16 114?

17 A Okay.

18 Q Do you see those entries, sir?

19 A Yes.

20 Q Now as far as the time related to box 113 and 114,
21 what are the time stamps associated with that?

22 A 1/29/2022 at 12:36 a.m. 41 seconds, and then
23 another one at 12:36 and 10 seconds a.m. on the 29th.

24 Q And is there any indication within that report as
25 far as whether or not those calls are answered, those

1 calls are missed, those calls are rejected. What's
2 listed?

3 A It says answered.

4 Q And we'll get to this a little bit more in a
5 moment, but with regard to that 12:36 time from your
6 review of both the defendant's phone and Mr. O'Keefe's
7 phone, is there a voicemail that the defendant left Mr.
8 O'Keefe at that time frame?

9 A There was a voicemail at 12:37 a.m. These ones
10 here, it looks like they're three seconds and five
11 seconds long.

12 Q And they're listed as answered; is that correct?

13 A That is correct.

14 Q Now, sir, if I could turn your attention over to
15 Mr. O'Keefe's call report, and specifically, I'm going
16 to ask you to direct your attention to what's been
17 labeled as box number 134 and then 134 with the one in
18 parentheses.

19 A Okay.

20 Q Do you see those entries, sir?

21 A Yes.

22 Q And what is the date and time associated with those
23 entries in Mr. O'Keefe's records?

24 A His records it shows number 134 is 12:36 and nine
25 seconds on the 29th and then 134 with the one in the

1 parentheses 12:36 and nine seconds as well with a call
2 duration zero seconds.

3 Q And as far as any indication on those calls, as far
4 as whether they're answered, they're missed, they're
5 rejected, or what are they listed as?

6 A There's nothing -- the also 133, is the same call.
7 That one says missed, and it's at the same time stamp
8 of 12:36 and nine seconds.

9 Q So the same call around the same time frame shows
10 up in Mr. O'Keefe's report as missed and shows up in
11 the defendant's report as answered, correct?

12 A That is correct.

13 Q And that is around the time that the defendant is
14 calling the victim repeatedly and leaving voicemails on
15 Mr. O'Keefe's phone?

16 A Yes, that's correct.

17 MR. LALLY: May I approach just to retrieve, Your
18 Honor?

19 THE COURT: Yes.

20 A Yes.

21 Q Now, Trooper Guarino, you conducted an analysis of
22 both the defendant's phone and Mr. O'Keefe phone,
23 correct?

24 A That is correct.

25 Q And from your analysis of that phone, were you able

1 to determine approximately how many calls occurred from
2 the defendant's phone to Mr. O'Keefe's phone from the
3 time period shortly after 12:30 a.m. to the time period
4 shortly after 6:00 a.m.?

5 A There was over 50. I think it was 53 or 55.

6 Q And any of those calls from your review of those
7 records indicate any sort of conversation as far as
8 duration, as far as being labeled as answered, anything
9 to that effect?

10 A That Mr. O'Keefe actually picked up the phone and
11 spoke to Ms. Read?

12 Q Yes.

13 A No.

14 Q Now with regards to those phone calls from the
15 defendant to Mr. O'Keefe, what, if anything, did you
16 find from Mr. O'Keefe's phone in relation to voicemails
17 left by the defendant?

18 A There were -- should be eight voicemails on Mr.
19 O'Keefe phone from the 29th until the phone was
20 discovered, all from Ms. Read, no one else.

21 MR. LALLY: May I approach, Your Honor?

22 THE COURT: Yes.

23 Q Showing you this, sir. Do you recognize that?

24 A Yes.

25 Q And what do you recognize that to be?

1 A It's the John O'Keefe voicemails from Karen Read
2 on his phone.

3 Q From that period that we're just speaking about on
4 January 29?

5 A Yes, that's correct.

6 MR. LALLY: May I approach, Your Honor?

7 THE COURT: Yes.

8 MR. LALLY: Commonwealth would seek to introduce
9 and admit as the next exhibit.

10 MR. YANNETTI: We have no objection.

11 (Whereupon Exhibit No. 637, CD with John O'Keefe's
12 Voicemails, was marked as an exhibit.)

13 Q Now, sir, from your review of the defendant's phone
14 -- before we get to those, from your review of the
15 defendant's phone, what, if anything, were you able to
16 observe or ascertain that the defendant's phone did at
17 approximately 12:36 a.m.?

18 A So by looking at the timeline in the phone, we were
19 able to see that Ms. Read's phone auto-connected to
20 John O'Keefe's WiFi at his house at 12:36 a.m. We know
21 this because it's a password protected access to the
22 phone. So you would have to know the password to get
23 into this WiFi network.

24 Q And that would be the home at 1 Meadows Avenue,
25 correct?

1 A Yes, that's correct.

2 MR. LALLY: And, Your Honor, with the Court's
3 permission, if we could publish each of the eight
4 voicemails to the jury?

5 THE COURT: Okay. Are we going to hear which time
6 each one is?

7 MR. LALLY: Yes, Your Honor.

8 Q And, Trooper Guarino, again similar to the other
9 messages just for point of reference, the earliest of
10 the voicemails is the last in the list, and the most
11 recent is at the top of the list; is that correct?

12 A Yes.

13 Q Now as far as this first voicemail, what time did
14 this occur?

15 A 12:37 a.m.

16 MR. LALLY: And with the Court's permission, if I
17 could play that for the jury.

18 THE COURT: Yes.

19 (Whereupon Exhibit 637 played.)

20 MR. LALLY: Ms. Gilman, if you could have the
21 second message.

22 (Whereupon Exhibit 637 played.)

23 MR. LALLY: Sorry, Ms. Gilman, if you could pause
24 right there, please. My apologies. I just wanted the
25 siren to go by.

1 THE COURT: No, that's fine.

2 Q Before Ms. Gilman presses play again, Trooper
3 Guarino, what time is this second message?

4 A 12:42.

5 MR. LALLY: Ms. Gilman, if you could.

6 (Whereupon Exhibit 637 played.)

7 Q Now, Trooper Guarino, with reference to the third
8 message, what time is that received?

9 A 12:59.

10 Q And again, when I say received by Mr. O'Keefe's
11 phone; is that correct?

12 A That's the time stamp of the voicemail in his
13 phone, yes.

14 MR. LALLY: And Ms. Gilman, if you could with
15 reference to that third message.

16 (Whereupon Exhibit 637 played.)

17 Q Now the fourth message, Trooper Guarino, what time
18 was that received by Mr. O'Keefe's phone?

19 A 1:02 a.m.

20 MR. LALLY: Ms. Gilman, if you could when you're
21 ready.

22 (Whereupon Exhibit 637 played.)

23 A That was it.

24 THE COURT: So can we just turn the air conditioner
25 off for just a second, please? So you just played it?

1 THE WITNESS: Your Honor, there was no content.
2 They were just, like, a one-second long message.

3 THE COURT: Okay.

4 Q And, Trooper Guarino, with regard to the fifth
5 message, what time was that received by Mr. O'Keefe's
6 phone?

7 A 1:11 a.m. Excuse me.

8 MR. LALLY: And, Ms. Gilman, if you could.

9 (Whereupon Exhibit 637 played.)

10 Q And the sixth message, sir, What time was that
11 received by Mr. O'Keefe's phone?

12 A 1:18 a.m.

13 MR. LALLY: Ms. Gilman , if you could.

14 (Whereupon Exhibit 637 played.)

15 Q The seventh message, sir, What time was that
16 received by Mr. O'Keefe's phone?

17 A 5:23 a.m.

18 MR. LALLY: Ms. Gilman, if you could.

19 (Whereupon Exhibit 637 played.)

20 Q And the last and eighth message, sir, what time was
21 I received by Mr. O'Keefe's phone?

22 A 6:08 a.m.

23 MR. LALLY: Ms. Gilman, if you could.

24 (Whereupon Exhibit 637 played.)

25 MR. LALLY: And if you could pause there for one

1 second. I'm sorry.

2 Q With respect to this message received on Mr.
3 O'Keefe's phone at 6:08 a.m., from your knowledge of
4 the investigation, where was the defendant? Who, if
5 anyone, was with or around her at the time of this
6 message at 6:08 a.m.?

7 A Jen McCabe, Kerry Roberts. During the message, you
8 can hear someone on the phone with 911.

9 Q Thank you, sir.

10 MR. LALLY: Ms. Gilman, if you could.

11 (Whereupon Exhibit 637 played.)

12 MR. LALLY: Thank you, Ms. Gilman. All right.
13 Can we turn the air conditioning back on? Thank you
14 very much.

15 Q Now, Trooper Guarino, in addition to the 53 phone
16 calls that you've testified about the defendant made to
17 Mr. O'Keefe from that time frame following 12:30 a.m.
18 to approximately 6:00 -- just past 6:00 a.m., did you
19 note any other calls to a contact listed within the
20 defendant's phone as mom?

21 A Yes.

22 Q And when were those calls placed?

23 A I believe there's one at 1:10-ish in the morning. I
24 forget the exact time stamp. There's also one around
25 4:40 in the morning, and then at 4:42. Right around

1 4:00 in the morning. Two of them, the first two
2 weren't answered, and then the third phone call was
3 answered.

4 Q Now, with respect to Ms. Read's phone from that
5 same time period, what if any phone calls did you
6 observe to a contact listed in the defendant's phone as
7 dad?

8 A It's the same number. So when I looked at it in one
9 report, it showed as dad, and then when I looked at it
10 in Cellebrite, it came up as mom. So I don't know how
11 it's attributing maybe she has it listed twice. I never
12 looked at her actual phone, so this is what the
13 extraction is showing me.

14 Q Now, sir, you testified the other day that upon
15 your review of the defendant's extraction reports, you
16 were not able to determine there were no listed GPS
17 locations for the defendant's phone?

18 A Correct. Like routes or anything like that.

19 Q And that was because it was turned off in the
20 phone; is that correct?

21 A That would lead me to believe, yes, that location
22 services are turned off, so.

23 MR. YANNETTI: Objection. Move to strike.

24 THE COURT: So no guess. What can you tell
25 us about that?

1 A Well if GPS coordinates and location service is on,
2 that's what would get us locations in the phone. So if
3 they're not there, they could be turned off.

4 MR. YANNETTI: Objection. Move to strike.

5 THE COURT: I'll allow that.

6 Q Now with respect to Mr. O'Keefe phone, what if any
7 analysis with respect to GPS and/or health data --
8 well, let me ask you this, sir.

9 From your training and experience and your case
10 work with respect to forensic analysis of electronic
11 devices, what is health data in a cell phone? How is
12 that reported, and what, if anything, can that tell
13 you?

14 A Okay. So in an iPhone, you can have health data.
15 To use that health data, the phone, if you don't have
16 an iWatch paired to it, it's basically just a high tech
17 pedometer. It's just every time you move the phone,
18 it's going to track steps, and that's if you have it
19 turned on. If you have the iWatch on, it'll get beats
20 per minute and you get a much more robust health data
21 from it.

22 Q Now, with respect to the health data and with
23 respect to the GPS location for Mr. O'Keefe phone,
24 initially, what if any sort of analysis did you do with
25 respect to that?

1 A So we checked his native locations. At 12:19,
2 the phone is -- well, I should say is at 12:12 in his
3 location it shows that he's at the Waterfall Bar. The
4 next set of locations shows he's at Dedham Street by
5 Cedarcrest, and then Waze is activated for 34 Fairview.
6 So and then it shows me his entire route to 34
7 Fairview.

8 Q And what is Waze, sir?

9 A Waze is similar to Apple Maps. It is a GPS program
10 that, you know, punch in like a Garmin type thing.

11 Q I'd like to take you back just for a moment, just
12 to the health data from the Cellebrite extraction that
13 you did, specifically you looked at data from 12:00
14 a.m. to 1:00 a.m. on January 29, 2022; is that correct?

15 A Yes, that's correct.

16 Q And as far as the health data was concerned, there
17 was some entries from 12:11 a.m. to 12:32 a.m.; is that
18 correct?

19 A Yes, that's correct.

20 Q And can you describe to the jury sort of what you
21 observed, and what if any significance those entries
22 had to you as far as the health data was concerned?

23 A Yeah. So the health data shows, like I said, the
24 phone is basically a high tech pedometer. If you're
25 moving it around, it's going to think you're taking

1 steps, but you might not actually be walking. His
2 health data showed while he's driving that he's
3 traveling and taking steps.

4 MR. YANNETTI: Objection. Move to strike.

5 THE COURT: So I need a foundation.

6 Q Trooper Guarino, over the course you've gained --
7 over the course of this investigation, your analysis,
8 you became aware of other witness statements,
9 surveillance video things of that nature as to Mr.
10 O'Keefe's whereabouts from approximately 12:00 a.m. to
11 at least 1:00 a.m.; is that correct?

12 A Yes, that's correct.

13 Q And you're aware of around the time just past 6:00
14 a.m. when the --

15 MR. YANNETTI: Your Honor, objection.

16 THE COURT: So let's hear the question.

17 MR. YANNETTI: Well, that's my objection.

18 THE COURT: Go ahead, Mr. Lally.

19 Q You're aware of the time being just past 6:00 a.m.
20 that you already testified to as to when Mr. O'Keefe
21 was discovered and 911 was called?

22 A Yes, that's correct.

23 Q So, sir, with respect to again that time period
24 starting at 12:11 a.m., what, if anything, did you
25 observe with respect to the health data of Mr. O'Keefe

1 as signified within the phone?

2 A So it marks when he's taking steps, ascending, or I
3 should say, yeah, ascending stairs and distance
4 traveled.

5 Q And so from that period of 12:11 to 12:32, there
6 are essentially four time periods that you delineated;
7 is that correct?

8 A Yes, that's correct.

9 Q And do you remember the precise times and sort of
10 distance traveled within those time frames?

11 A I don't remember the precisely off top of my head.

12 MR. LALLY: Your Honor, with the Court's
13 permission, may the trooper refer to his report just
14 for those numbers?

15 THE COURT: Yes. Do you have it with you, Trooper?

16 THE WITNESS: Yes, Your Honor. Thank you. Okay.

17 Q And, sir, if you could just list for the jury what
18 you found?

19 A Yes. So at 12:11 and nine seconds in the morning to
20 12:21 and five seconds on the 29th, it shows that he's
21 taking 170 steps going 99.6 meters, or 326 feet. At --

22 Q Go ahead.

23 A Sorry. At 12:21 and ten seconds to 12:24 and
24 twenty-two seconds, it shows 80 steps and 87.74 meters
25 or 287 feet. At 12:21, 14 seconds to 12:24 and 37

1 seconds, it stated ascending/descending three floors.
2 And then at 123156 to 123216 in the morning, 36 steps,
3 25.46 meters, or 85 feet.

4 Q Now, sir, with respect to what's listed as steps.
5 Does that indicate from based on your training and
6 experience and familiarity with this sort of health
7 data, what, if anything, does that tell you as to
8 whether or not the person with the phone is physically
9 taking steps?

10 A That's not the case.

11 Q What is the case?

12 A Like I said, the phone has internal measures.

13 MR. YANNETTI: Objection.

14 THE COURT: No, I'll allow it.

15 Q The phone has internal measures in it, but like I
16 said, it's basically a pedometer, so the movement to
17 the phone, the distance traveled, it's going to
18 register steps. You don't have to physically be walking
19 and moving the phone for it to register movement. Just
20 waving it around and then could potentially cause it to
21 think you're walking and moving.

22 Q You mentioned that from your view of Mr. O'Keefe's
23 phone you indicated there was a Waze search for 34
24 Fairview Road; is that correct?

25 A Yes, that's correct.

1 Q And if you could just explain to the jury sort of
2 what is -- what is Waze and what kind of information
3 are you looking at?

4 A Waze is a GPS program. So you put your address
5 you're looking to go to, it's going to tell you the
6 fastest route, where the police are, et cetera.

7 Q And when that Waze search was conducted, is there a
8 precise time pursuant to your review of Mr. O'Keefe's
9 phone associated with that Waze search?

10 A Yes, it was at 12:20 in the morning.

11 Q And so from all of those steps and everything that
12 you -- if Mr. O'Keefe is searching for 34 Fairview
13 Road, inferably he's not at 34 Fairview Road; is that
14 correct?

15 A That is correct.

16 Q Now, with respect to the location, can you describe
17 to the jury -- are you familiar with the term based on
18 your training and experience, known as native
19 locations?

20 A Yes.

21 Q And can you explain to the jury what that is?

22 A So native locations on an iPhone, the way it pulls
23 GPS data, it uses satellite, WiFi signal, Bluetooth,
24 location services on apps. It takes all that data and
25 uses intel to get you the best location of where you

1 are unlike where you'd have like a handheld car mounted
2 Garmin GPS that's just using strictly satellite.

3 Q Now, from your review of that data, when that Waze
4 search is conducted at approximately 12:20 a.m., where
5 is Mr. O'Keefe physically located at that time?

6 A The vehicle or whatever they're in is by 138 Denham
7 Street. They had already passed Cedarcrest Road.

8 Q And from review of that native location data, what
9 time does the phone arrive in the area of 34 Fairview
10 Road?

11 A 12:24 a.m.

12 Q Now the next entry, as far as the location data,
13 when is that and where is it indicating that the phone
14 is at that?

15 A It shows me it's there the entire night, right in
16 between 32 and 34 Fairview.

17 Q And 32 and 34 Fairview, that sort of intersection
18 of those two residences, if you know, where is that, in
19 relation to where Mr. O'Keefe was found just after 6:00
20 a.m. in the morning?

21 A I was only going by the photos that Sergeant Goode
22 had taken and from the Canton PD cruiser cam, but that
23 area would be within 3 feet give or take of the area
24 where the GPS signals all plot for the rest of the
25 night.

1 Q Trooper Guarino, you testified the other day to a
2 tool that you use called Axiom; is that correct?

3 A Yes.

4 Q And with regard to the location data and the tool
5 of Axiom, what, if anything, can you tell the jury as
6 far as how that works and how accurate it is?

7 A So like Cellebrite, Axiom will also show the native
8 locations in an iPhone. They're able to display the
9 range of accuracy in meters, and then also the speed of
10 the phone in meters per second.

11 Q And were you able to ascertain from using the Axiom
12 tool and the location data for Mr. O'Keefe's phone, as
13 far as its speed in meters per seconds at 12:25:36
14 a.m.?

15 A I was. I don't remember it off the top of my head.

16 MR. LALLY: Your Honor, with the Court's
17 permission, may the Trooper refer to his report for the
18 numbers?

19 THE COURT: Go ahead.

20 A It's a point 6346 meters per second at a 16.75
21 meter lever of accuracy. So at about 54 feet measure of
22 accuracy.

23 Q Now, sir, if you could just based on your training
24 and experience and your use familiarity with this Axiom
25 tool -- for the record, that's A-X-I-O-M; is that

1 correct?

2 A Yes, that is correct.

3 Q So as far as that degree of certainty or accuracy
4 with regard to the measurement, can you speak a little
5 bit about that and explain that to the jury how that --
6 how that works and what that means?

7 A So, you know, as I said, the iPhone tries to use
8 multiple things to get you the best area of location
9 where you're at. I can tell from personal experience
10 that being at 34 Fairview, it's at the bottom --
11 Fairview -- where 34 is on Fairview, it's at the bottom
12 of the hill, and it's also at the bottom of Cedarcrest
13 where they sort of intersect. That area there has many
14 hills, so the GPS signal can weaken due to natural
15 landscape, buildings, weather, multiple faction --
16 factors.

17 Q And as far as the degree of accuracy, what, if
18 anything, does that tell you in regard to the location
19 of the phone in reference to that degree of accuracy?

20 A So it plots a point where it believes you are, and
21 then the degree of accuracy says you could be in this
22 bubble, but if it's way outside or way far away, it's
23 all going to show by how well the signal strength is to
24 the satellite. So like I said, if it's a poor signal,
25 it's going to blow out. It's going to show you could be

1 in this giant circle. But as it gets better, actually,
2 it's going to shrink back down. It's going to say,
3 nope, you're right about here.

4 Q And to that point or to elucidate that point that
5 you were just speaking on - we'll get to this more in
6 depth in a second - but at some point in 2023, did you
7 go to 34 Fairview Road to conduct some GPS mapping?

8 A Yes, I did.

9 Q And when you were in that area of 34 Fairview Road,
10 what, if anything, did you observe, with reference to
11 satellite connection, cell phone connection, things of
12 that nature, as far as the strength of the signal?

13 A So on my way to work, I actually drive Fairview
14 quite often, and being there in person with my phone,
15 I'll go from four or five bars of service where I'm
16 there, it's one or two. So that tells me that strength
17 of signal there is not great.

18 Q Now, turning back to this location data from Mr.
19 O'Keefe's phone, you mentioned that it's -- you
20 testified that at 12:25:36 a.m., it has a certain
21 accuracy and was traveling at certain speed, correct?

22 A Yes.

23 Q Now what if any speed is recorded in this location
24 data between that 12:25 a.m. and 6:15:36 a.m.?

25 THE WITNESS: Your Honor, may I just --

1 THE COURT: Yes.

2 THE WITNESS: Thank you.

3 A What time frame exactly are you looking for?

4 Q What I'm asking is, what if any speed was recorded
5 by the location data between that first 12:25:36 a.m.
6 and 6:15:36 a.m.

7 A Oh, I'm sorry. I thought you're asking for before
8 that. There's no real speed registered until the phone
9 is found the next morning.

10 Q And so that would be at the 6:15:36 a.m. time
11 frame; is that correct?

12 A Yes, that's correct.

13 Q And what speed is recorded at that time at 6:15:36
14 in the morning?

15 A It shows .24 per second for speed and then with an
16 accuracy rating of 7.58 meters, which is 24 feet.

17 Q Now, sir, if I could turn your attention to May 8,
18 2023. Where did you go with relation to this
19 investigation on that day?

20 A I went to 34 Fairview.

21 Q And who, if anyone, went with you?

22 A Trooper Proctor.

23 Q Now, what was the purpose of going to 34 Fairview
24 Road on that day of May 8th of 2023?

25 A We wanted to take measurements of where Officer

1 O'Keefe's body was found, and then basically a
2 diagonal, straight line to the door, how the distance
3 that would be.

4 Q And what if any tools did you bring with you, and
5 what, if anything, did you use in the course of this
6 analysis on this day?

7 A So I loaded in the GPS points into a program that
8 the SERT team uses called SARTopo. It's a GPS mapping
9 program that you can view through an app. So that way,
10 I was able to see exactly where I was via the app. We
11 also used one of the big, long tape measures that's in,
12 like, the big thing that would get us, you know, from
13 where we believed his body was to the front door.

14 Q And from that as far as the determination of where
15 Mr. O'Keefe's body was located, what, if anything, did
16 you use to determine that?

17 A As I said before, the photos and video from
18 Sergeant Goode of Canton P.D. and the Canton P.D.
19 cruiser cam video.

20 Q So the cruiser cam video that from -- Officer
21 Saraf's cruiser; is that correct?

22 A Yes, that's correct.

23 Q And the one that shows where Mr. O'Keefe's body is
24 when Officer Saraf arrives on scene, correct?

25 A That is correct.

1 Q Now, with regard to those particular GPS points,
2 what time frame did you start as far as your mapping
3 was concerned?

4 A We took the last -- well, we mapped the entire
5 route. So at the Waterfall Bar and then on from their
6 drive on Dedham Street down to 34 Fairview.

7 Q And as far as these locations, how were they
8 measured as far as what kind of measurements were you
9 using in order to plot those points?

10 A We loaded into Google Maps and just able to show it
11 with the KMZ file to show exactly where he went.

12 Q So what I'm asking you is as far as the GPS
13 locations that you were recording, how were those
14 measured as far as longitude/latitude, is that how they
15 were measured?

16 A Yes, I'm sorry. Yeah, latitude and longitude.

17 Q And you started with Mr. O'Keefe at the Waterfall
18 Bar in Canton. What time was that, if you know?

19 A 12:12 a.m. was the last point.

20 Q And then that time frame when Mr. O'Keefe's native
21 locations are putting him in the area of 34 Fairview
22 Road, when was that first time frame?

23 A The time he arrives?

24 Q Yes.

25 A About 12:24, I forget the seconds, but 12:24 a.m.

1 Q Now, eventually, when you had all of these points,
2 as far as the direction of travel, location data, all
3 of those things, what, if anything, were you then able
4 to do with those GPS locations?

5 A I cross-referenced them with his health data, and
6 also mapped it out to see exactly where he would be.

7 Q Now, with respect to the data that you were able to
8 recover, if you could describe to the jury sort of the
9 path of travel, starting with the Waterfall, as far as
10 where Mr. O'Keefe's phone was, where it traveled and
11 then where you noted it at various time points along
12 that sequence.

13 A Okay. So as I said at 12:12, it's at the Waterfall
14 Bar. Then there's a seven minute break in location
15 data. When the phone comes back up with location data
16 at 12:19, as I said, he's by Dedham Street and
17 Cedarcrest Road. At 138 Dedham Street, right around
18 there, 12:20 a.m., 34 Fairview is put into Waze. He
19 then proceeds down Dedham Street, takes a left onto
20 Oakdale Road, goes to the end of Oakdale, takes a left
21 onto Maplecroft. As he's going by Maplecroft and Pine
22 Cone Road, right around 12:22 and 14 seconds was a data
23 point listed that he's ascending/descending the stairs.
24 So he's over a half mile away from 34 Fairview at this
25 point. They go down Maplecroft, take a right onto

1 Cedarcrest, all the way down Cedarcrest. They do not
2 turn on to Fairview Road. It goes by Fairview, does a
3 three-point turn, or turns around somehow, and then
4 goes back to Fairview and takes a right where it
5 finally stops between 34 and 32 Fairview.

6 Q So at the time that that that health data is being
7 recorded, again, you cross-reference the GPS data with
8 the health data from Mr. O'Keefe phone, correct?

9 A Yes, that's correct.

10 Q And so at the time that the phone has that
11 recording and health data descending -- and is it
12 ascending or descending, or how does that read in the
13 health data?

14 A I have in my report and it's copied from the thing,
15 it's ascending/descending stairs.

16 Q And at that point in time, cross-referencing that
17 health data with the GPS location where, physically, is
18 Mr. O'Keefe's phone at that particular time frame?

19 A Maple Croft by Pine Cone Road, right at that
20 intersection.

21 Q And has Mr. O'Keefe phone arrived or been in the
22 area as far as the GPS specifically at 34 Fairview
23 Road?

24 A At that time?

25 Q Yes.

1 A No, not at all.

2 Q And so from GPS locations that you observed that of
3 the defendant's phone initially, the phone passes by
4 Fairview Road and then reverses direction to come back,
5 correct?

6 A Yes, that's correct.

7 Q And then as far as between 12:25 a.m. and 6:15
8 a.m., there's no movement of that phone, correct?

9 MR. YANNETTI: Objection.

10 THE COURT: To the form, it's sustained.

11 Q What if any movement did you observe following
12 12:25 a.m. until the period of 6:15 a.m.?

13 A None until it was found at 6:15.

14 Q Now, you mentioned that you took a tool and you did
15 some measurements as well; is that correct?

16 A Yes.

17 Q And were you able to ascertain then some GPS
18 locations for where Mr. O'Keefe body was found?

19 A Yes.

20 Q And what if any measurements, excuse me -- the
21 accuracy of those GPS measurements in latitude and
22 longitude, what was the accuracy of that?

23 A So may I read the exact thing?

24 So from 12:25 and 30 seconds to about 12:35 and 36
25 seconds, the GPS accuracy is tight on them for the

1 first few seconds, and then blows out encompasses
2 pretty much the neighborhood 34 Fairview, 32, 31, and
3 I'll read the exact. It's at 12:25 and 30 seconds. It
4 has a 33 meter degree of accuracy, which is about 100
5 feet. That area encompasses 32, 34, and 31 Fairview.
6 12:25:31 is 200 foot measure of accuracy that hits 31,
7 32, 34 Fairview, basically all the houses around. At
8 32 seconds, it shrinks back down to 95 foot level of
9 accuracy pinning 32, 34 Fairview and the front yard of
10 31. At 33 seconds, it's 88 feet again, shrinking back
11 in as the signal gets better covering 32, 34 Fairview.
12 72 feet at 34 seconds. 59 feet at 35 seconds. And
13 then 52 feet at 36 seconds. So as I said, signal
14 weakens, it blows out. And then as signal gets
15 stronger, it shrinks back in. The GPS coordinates
16 themselves are all still right where Mr. O'Keefe's body
17 was found.

18 Q And so as far as, Trooper, if I can take you back
19 just for a second, the initial GPS coordinates that you
20 marked as far as where Mr. O'Keefe's body was found,
21 how accurate was that measurement as far as to itself
22 where it was?

23 A From what we had and then where we marked from, we
24 believe we were in about 3 feet, because standing
25 there, even with the app, it's not perfect. I'm not

1 getting a direct saying that I'm right on it. So we
2 believe we're within about 3 feet of exactly where he
3 was found.

4 Q And from that area distance of within 3 feet of
5 where Mr. O'Keefe's body was found, how far was that,
6 or how far did you measure that to be from the front
7 door of 34 Fairview Road?

8 A In a direct straight line to the front door, 72
9 feet. Not accounting the stairs.

10 Q Now, from your review of that data that you were
11 talking about from that 12:35 -- 12:35 and 30 -- excuse
12 me, 12:25 and 30 seconds through 12:25:36 seconds, when
13 it fluctuates, what time period of that is -- what time
14 period of any of the times that you observed is it
15 possible that John O'Keefe was actually anywhere near
16 34th Fairview Road, the house?

17 MR. YANNETTI: Objection.

18 THE COURT: Ask it differently, Mr. Lally.

19 MR. LALLY: Sure.

20 Q Within those fluctuating circles of GPS data that
21 you were talking about, what time period did those
22 encompass the actual inside of the residence of 34
23 Fairview Road?

24 A It's about three seconds where it actually counts
25 as the inside of Fairview. That fourth second, it's

1 right on the edge of the corner of the house. And then
2 the fifth and sixth second, they're -- it's just
3 showing the front yard.

4 Q In that time period as far as -- that time period
5 as far as those GPS data from those circles, with
6 reference to the following time periods after those,
7 what if any -- based on your training and experience,
8 what if any opinions were able to draw from sort of
9 that data?

10 A So he would have to go from the GPS point that's
11 listed, it would take him, you know, a second and a
12 half to get to the house, and then a second half back
13 where his body was found, where his phone was
14 underneath him. That would -- he'd have to go about 48
15 feet a second when I did a velocity calculation which
16 is about 32 miles an hour a second to the house, a
17 second back. There's no -- there was no GPS points
18 ever showing inside the home, the backyard of the home.
19 There's no lat and long listed. It's just the degree of
20 accuracy from the GPS signal.

21 Q So 72 feet from where Mr. O'Keefe's body was found
22 to the front door of 34 Fairview Road, in order for him
23 to be inside of 34 Fairview Road during any of those
24 measured time frames, he would have to travel --

25 MR. YANNETTI: Objection.

1 Q -- 72 feet and one and a half --

2 THE COURT: The objection's sustained. The
3 objection is sustained.

4 Q Sir, again, if I could ask you the -- from the Mr.
5 O'Keefe's health data as far as his specific physical
6 location at the time that it indicates ascending and
7 descending, how far away from 34 Fairview Road was it
8 when it registered that?

9 A Over a half mile away. So Maplecroft to Pine Cone
10 Road.

11 Q In your opinion, sir, at any point in time from the
12 data that you reviewed did Mr. O'Keefe enter 34
13 Fairview Road?

14 MR. YANNETTI: Objection.

15 THE COURT: I'll sustain the objection.

16 MR. LALLY: May I approach, Your Honor?

17 THE COURT: Yes.

18 Q I'm showing you a series of documents. View those
19 and look up when you're finished.

20 A (Witness complies.) Okay.

21 Q Do you recognize those, sir?

22 A Yes.

23 Q And what do you recognize those to be?

24 A These are the plotted points I did through Google
25 Earth, the maps and then the through LexisNexis, the

1 track system, the GPS range and coordinates.

2 Q And the LexisNexis track system, if you could
3 explain just a bit to the jury as far as what that is
4 and how it's used to create these documents before you.

5 A It's similar to that SARTopo program I used. It's
6 a desktop based GPS program. You put the points in, and
7 then it will map them out and create, like I said, a
8 KMZ file for you so you can load into Google Earth.

9 MR. LALLY: May I approach, Your Honor?

10 THE COURT: Yes.

11 MR. LALLY: Commonwealth would seek to introduce
12 this as the next exhibit.

13 THE COURT: Okay.

14 MR. YANNETTI: No objection.

15 (Whereupon Exhibit No. 638, Overview of Plotted Points
16 from Axiom, was marked as an exhibit.)

17 MR. LALLY: May I return to the witness, Your
18 Honor?

19 THE COURT: Yes.

20 MR. LALLY: With the Court's permission, may I
21 publish this to the jury?

22 THE COURT: Yes.

23 MR. LALLY: Ms. Gilman, if you could take that
24 down. May I have one moment, Your Honor?

25 THE COURT: Yes.

1 THE WITNESS: Can I stand up?

2 THE COURT: Of course you can. In fact, Trooper, if
3 you're more comfortable standing for some of your
4 testimony, you certainly can.

5 THE WITNESS: Thank you, Your Honor.

6 MR. LALLY: Ms. Gilman, if you could enlarge that
7 just a bit. Thank you.

8 Q Now, Trooper, there should be a laser pointer up on
9 the stand before you. If you could, first of all, let
10 me just ask, do you recognize what's up on the screen
11 now as the next exhibit?

12 A Yes.

13 Q And again, if you could explain to the jury, sir,
14 what we're looking at in this slide, and then using
15 that laser pointer, if you could, direct the jury's
16 attention to what if anything of significance you have
17 in this particular file?

18 A So I took an overview of the town of Canton. So
19 this here is the GPS route, and then down over -- I can
20 barely see. Let me just look on the map here. It's not
21 much better. The Waterfall Bar is right -- I can't
22 really tell honestly from this, but it's on Washington
23 Street. It's down here. I'm sorry. That's why I
24 included an overview of everything, so you could see
25 the full range from the time period with that GPS

1 locations.

2 MR. LALLY: Your Honor, if I may would it be
3 possible --

4 THE COURT: Keep your voice up.

5 MR. LALLY: I'm sorry. I don't know if this is
6 going to work any better, but if I could ask if we
7 could turn the lights back on just so the witness can
8 see what's before him.

9 THE COURT: Sure.

10 MR. LALLY: With the Court's permission, I think
11 the map is still viewable to the jury, and now the
12 witness can actually see the exhibit.

13 THE COURT: Can everybody see it?

14 Q And so again, sir, Trooper, I'm sorry. Now with
15 visible before you, could just indicate, again, what
16 we're looking at in this?

17 A Yep, so when you zoomed in it actually closed it
18 up. But it's down over here's the Waterfall Bar.
19 There's a couple of points there listed. And then right
20 around here is when the GPS tracks go and their route
21 once Waze is activated down to 34 Fairview. There is a
22 zoomed in version of by Fairview.

23 MR. LALLY: And, Ms. Gilman, if I could have the
24 next slide.

25 A So --

1 Q Trooper, what are we looking at in this slide?

2 A Yeah. So this is the track. This one shows the
3 12:22 -- yeah, 12:22 and 14 second GPS point where the
4 -- right here, where the little arrow is, that's
5 exactly where they were when the phone is registering
6 the ascending/descending stairs like listed in
7 Cellebrite.

8 Q And if you could using that laser pointer
9 illustrate to the jury where that point is in relation
10 to where 34 Fairview Road is?

11 A Yes. So this is where they were with the
12 ascending/descending stairs. They would go continue
13 down through this little piece here, take the right
14 onto Cedarcrest. They'd continue down Cedarcrest,
15 missing Fairview right here, and then turn back around
16 and then come to the house.

17 MR. LALLY: And, Ms. Gilman, if I could have the
18 next slide.

19 Q And, Trooper, what are we looking at in this slide?
20 Specifically, if you could explain to the jury as far
21 as the blue circle --

22 THE COURT REPORTER: If you could look this way,
23 please.

24 Q -- attached to the LexisNexis tracks, if you
25 explain to jury what that is and what that signifies?

1 A Yes. So as I said, we loaded this in through
2 LexisNexis, and it gave us the GPS points for -- for
3 the route. The point is 348. I just want to double
4 check. Yeah, point 348 is at 12:25 and 30 seconds. The
5 blue circle is the estimated range. So how well the
6 signal for the GPS is, and 34 Fairview is right pretty
7 much by that L.

8 MR. LALLY: Ms. Gilman, if I could have the next
9 slide.

10 A Yep. Here we go.

11 Q Trooper, is this essentially the same image, a
12 little bit closer without the graphic as far as the
13 LexisNexis?

14 A That's correct. If this is 34 Fairview right here,
15 32 and then again, this is where all the points are for
16 the duration.

17 Q As far as the blue circle that's up on the screen,
18 what does that represent as far as this particular
19 point in time for this GPS point 348 at 12:25 and 30
20 seconds?

21 A Yes, this is the, as I said before, the range of
22 accuracy due to satellite strength. So as I said, it
23 blows out as it loses strength, and then will come back
24 in as it gets better signal.

25 MR. LALLY: Ms. Gilman, if I could have the next

1 slide.

2 Q Again, Trooper, what's up on the screen? What are
3 we looking at this as far as 12:25, 31.

4 A Same area where 348 is. This is part 351. Again,
5 as you can see, strength of signal blows out and
6 encompasses almost the whole neighborhood or all the
7 houses around.

8 MR. LALLY: And, Ms. Gilman, if I could have the
9 next slide.

10 Q And, again, sir, is this the same GPS point of 351
11 -- numbered 351 at 12:25 and 31 seconds?

12 A Yes, it is.

13 Q And if you could again, just explain to the jury
14 what we're looking at in this slide?

15 A Same thing. Just the degree of accuracy and the
16 strength of the satellite signal to Officer Keefe's
17 phone.

18 MR. LALLY: Ms. Gilman, if I could have the next
19 slide.

20 Q And again, sir, if you could explain to the jury
21 what we're looking at in this slide of what time frame
22 we're talking about?

23 A Yep, this is point 349 at 32 seconds again,
24 latitude and longitude, they're all right in the same
25 area, and that's that.

1 MR. LALLY: Ms. Gilman, if I could have the next
2 slide.

3 Q Again, Trooper Guarino, is this the same GPS
4 plotting and the same time frame of 12:25:32 seconds?

5 A Yes, it is.

6 Q And again, if you could explain to the jury what
7 we're looking at in this, and in particular in relation
8 to the earlier slides, with reference to the accuracy
9 that you were talking about.

10 A Yep. So again, the accuracy blew out as a lost
11 signal, and now it's now shrinking back in as accuracy
12 gets better.

13 MR. LALLY: Ms. Gilman, if I could have next slide.

14 Q And, sir, what GPS point or what time frame are we
15 looking at in this particular spot?

16 A This is 12:25 and 33 seconds. Again, same area
17 lat/long right in the yard of 34 Fairview.

18 MR. LALLY: Ms. Gilman, if I could have the next
19 slide.

20 Q And, Trooper Guarino, is the same GPS point of
21 number 348 and 12:25 and 33 seconds?

22 A That's correct.

23 Q And if you could explain to the jury as far as the
24 accuracy and what we're looking at in this?

25 A Yep. So the -- I believe there actually wasn't that

1 much of a drop off, yeah. So it went from 88 feet to
2 72 feet. So the circle still doesn't look like it
3 really shrank much.

4 MR. LALLY: Ms. Gilman, if I could have the next
5 slide, please.

6 Q And again, Trooper, what time frame and what GPS
7 point are we looking at in this one?

8 A This is 12:25 and 34 seconds. Again, same thing
9 right there, the corner of 34 Fairview and 32 Fairview.

10 MR. LALLY: Ms. Gilman, if I could have the next
11 slide, please.

12 Q Trooper Guarino, this is the same GPS point number
13 350, 12:25 and 34 seconds; is that correct?

14 A That's correct.

15 Q And again, using, if you could, using that laser
16 pointer, direct the jurors' attention to what we're
17 looking at in this one?

18 A Yeah, so 34 Fairview is here. So as I said, this
19 point here is the last one where it sort of cuts out
20 the little corner of the house, but everything's still
21 showing directly. This is where it's believed to be.

22 MR. LALLY: Ms. Gilman, if I could have the next
23 slide.

24 Q And what GPS point and what time are we looking at
25 it in this one, sir?

1 A This one is 35 seconds, 12:25:35 seconds. Same
2 thing. Again, GPS points still saying it's right there
3 where his body was. But again, it dropped from 72 feet
4 of back street down to 59 feet. So it's going to show
5 the outside only of the house.

6 Q So the signal strength is strengthening at that
7 point; is that correct?

8 A That is correct.

9 MR. LALLY: And if I could have the next slide, Ms.
10 Gilman.

11 Q And again, sir, same GPS point in number 346, the
12 same time at 12:25:35; is that correct?

13 A That's correct.

14 MR. LALLY: Ms. Gilman, if I could have the next
15 slide.

16 Q Trooper Guarino, with regard to this slide, what
17 GPS points are depicted and what time frame are we
18 looking at?

19 A This is GPS point number 345 and it's 12:25 and 36
20 seconds. Again, showing that signal strength has,
21 again, grown and gotten better.

22 Q And as far as growing and gotten better, what
23 accuracy or what degree of accuracy in feet, are we
24 looking at in this?

25 A This is within 52 feet.

1 MR. LALLY: And, Ms. Gilman, lastly, from this
2 group, the next slide.

3 Q And, again, sir, this is the same as the previous
4 slide GPS point number 345, 12:25 and 36, seconds?

5 A That's correct.

6 Q And again, if you could using the laser pointer,
7 just illustrate to the jury what we're looking at?

8 A Yep. As I said, there's no -- any plotted points
9 anywhere other than right in this area (indicating) for
10 the rest of the night. This is where it stays. And
11 there's varying degrees of accuracy, but it's --
12 there's nothing ever showing it anywhere else in that
13 neighborhood.

14 MR. LALLY: May I approach, Your Honor?

15 THE COURT: Yes.

16 Q Do you have that last document?

17 A I just gave it back.

18 Q Perfect. If you could take a look at that and look
19 up when you're finished. Do you recognize that, sir?

20 A Yes. This a second map I created with the
21 Cellebrite locations from their native locations. The
22 previous one was from Axiom. So I used both programs to
23 map it.

24 Q Why did you use both programs, sir?

25 A As I said, Axiom showed movement and degree of

1 accuracy where Cellebrite doesn't. It just gives you
2 the native locations. I used two programs so I can
3 corroborate what I'm seeing in one is the same as the
4 other because if not, then I need to find out why.

5 Q And as far as the information from one program to
6 the other program, were they corroborative of each
7 other?

8 A Yes.

9 MR. LALLY: May I approach, Your Honor?

10 THE COURT: Yes.

11 MR. LALLY: Commonwealth would seek to introduce
12 and admit as the next exhibit.

13 MR. YANNETTI: No objection.

14 THE COURT REPORTER: As one?

15 MR. LALLY: Yes.

16 (Whereupon Exhibit No. 639, Map of Plotted Points from
17 Cellebrite, was marked as an exhibit.)

18 MR. LALLY: May I return it to the witness, Your
19 Honor?

20 THE COURT: Yes.

21 MR. LALLY: And with the Court's permission, may I
22 publish it to the jury?

23 THE COURT: Yes. With the lights on still?

24 MR. LALLY: I think so.

25 THE COURT: Okay.

1 MR. LALLY: Thank you, Your Honor.

2 Q Trooper Guarino, starting with the first page that
3 you have before you -- first of all, do you recognize
4 what's up on the screen as the first page of that next
5 exhibit?

6 A Yes, sir.

7 Q And again, if you could using the base pointer you
8 have before you direct the jury's attention to what, if
9 anything, of significance you observe in this first
10 page of this next exhibit?

11 A Yes, so I again, this is from the Waze app. They're
12 tracked from 34 to 34 Fairview down Cedarcrest again,
13 returning back here. So that's just the bottom half. I
14 just wanted to get a closer view of where the GPS plots
15 were from Cellebrite.

16 MR. LALLY: And the next slide, Ms. Gilman.

17 Q And again, sir, if you could explain to the jury
18 what we're looking at in this one.

19 A So the purple dots are the GPS points, and the
20 route taken. As I said, it goes up to I believe that's
21 51 Fairview -- excuse me -- Cedarcrest, and then
22 reverses back. And then this is the final point is
23 right here. 34 Fairview is right here. There's a little
24 yellow pushpin on it.

25 Q And again, sir, I'm sorry, just from the timing of

1 the plotting of the points or the plots that you have
2 there, if you could just using the laser pointer,
3 direct the jury's attention to the path that Mr.
4 O'Keefe's phone takes in reference -- if I ask could
5 you first if you could just illustrate to the jury in
6 this particular slide, where is 34 Fairview?

7 A Right here.

8 Q And then if I could ask you with the laser pointer,
9 to direct the jury's attention to the path of Mr.
10 O'Keefe's phone in sequence or how it travels and
11 arrives at that location.

12 A Yep, as I shown, goes down Cedarcrest, misses
13 Fairview, goes up to here by the house with the pool,
14 turns around, comes back, takes a right onto Fairview,
15 and then stops ultimately right in between 34 and 32
16 Fairview where the -- I think there's like a flagpole
17 and a fire hydrant right there.

18 MR. LALLY: Ms. Gilman, if I could have the next
19 slide.

20 Q And, Trooper Guarino, directing your attention to
21 this slide, what are we looking at?

22 A Again, I cross-referenced it with the points. This
23 is Maple -- excuse me -- Pine Cone Road and then
24 Maplecroft intersects here. And this is the
25 ascending/descending stairs point in his phone. Doing

1 a Google Earth elevation check, there's about a 20
2 degree dip, and then it goes up, and then, as you go
3 down, Cedarcrest the hill is about 50 foot elevation
4 change again. So it's pretty significant.

5 Q And so I'm sorry, sir, as far as the elevation
6 change that you're talking about, how is that measured,
7 and how -- and where is that, in reference to what's
8 depicted up here?

9 A So again, like I said, in this area here, it was
10 about a 20 foot drop. And then as you go down
11 Cedarcrest that hill, it's about 50 feet. This spot
12 here is the ascending/descending stairs. So as I said
13 before, he doesn't have an iWatch on so it's not
14 collecting that great health data. It's still acting as
15 a pedometer. So again, whatever movements he's doing is
16 triggering something in the phone as he's ascending and
17 descending these hills. Essentially, it could be
18 tricking the phone into thinking it's stairs.

19 MR. LALLY: Ms. Gilman, if I could have the next
20 slide.

21 Q And, Trooper Guarino, what are we looking at in
22 this one?

23 A This time stamp is 12:19:32 seconds. That's when
24 the phone initially starts creating the GPS points
25 before Waze is activated with 34 Fairview searched. So

1 this looks to be the time Waze is actually opened up.

2 Q And so from the purple dots that are depicted on
3 the screen as far as where is Mr. O'Keefe's phone at
4 12:19 a.m. in reference to 34 Fairview Road?

5 A 12:19 is right here, 34 Fairview is down all the
6 way here number -- we can't really see, but it's right
7 in the bottom corner.

8 MR. LALLY: And the next slide, Ms. Gilman.

9 A This is the same map, it's just minus the tracks --
10 the tracks graphics.

11 Q And I'm sorry, Trooper, I lost track of what page
12 we're on. Are there any other pages in that exhibit
13 before you?

14 A No, that's the last one.

15 MR. LALLY: May I approach just to retrieve, Your
16 Honor?

17 THE COURT: Yes.

18 MR. LALLY: And, Your Honor, may we approach?

19 THE COURT: Okay.

20 (Sidebar commences:

21 MR. YANETTI: If I may just have one moment?

22 (Counsel confer.)

23 THE COURT: You all set, Mr. Yanetti?

24 MR. YANETTI: Yes.

25 THE COURT: Okay. I just wanted -- you asked for a

1 minute, and I just needed to finish that --

2 MR. YANETTI: And I appreciate the fact that you
3 gave me that.

4 THE COURT: Yep, that's fine. I just wanted to
5 finish the loop.

6 MR. YANETTI: Thank you.

7 THE COURT: So I asked to approach because I think
8 I'm just at the point where the only thing I have left
9 of this witness is Google search.

10 THE COURT: Okay. All right. I'm going to tell
11 them that we're going to take a half hour or 45 minute
12 break. That should give you plenty of time, Mr.
13 Yanetti, right?

14 MR. YANETTI: Yes.

15 THE COURT: And then we will meet first before we
16 bring the jurors out.

17 THE COURT: All right. Trooper Guarino, we're going
18 to take our morning break. You, of course, have to
19 stick around, but you can file out when the jury does.

20 So, jurors, the lawyers and I have something that
21 we have to do, so it will be a little bit longer. I
22 hear it's nice and cool back in the jury deliberation
23 room. So we're going to take a half an hour, 45 minute
24 break here.

25 (Jury out.)

1 (Court in recess.)

2

3

4

5 (Court in session.)

6 (Defendant is present with counsel.)

7 THE COURT: All right. So, Mr. Yanetti, did that
8 give you enough time?

9 MR. YANETTI: Oh, I had enough time, yes. Thank
10 you.

11 THE COURT: All right. So, Ms. McLaughlin, why t
12 don't I hear you just briefly if you could frame this,
13 or Mr. Lally, whoever wants to.

14 MS. MCLAUGHLIN: Yes, Your Honor. The Commonwealth
15 is moving to introduce a Google search the defendant
16 conducted at 1:27 p.m. on January 29, 2022. The
17 Commonwealth would argue that the probative value of
18 this Google search outweighs any prejudice to the
19 defendant. The search in question is at 1:27 p.m.,
20 before the defendant had spoken to law enforcement.
21 She conducted a search for DUI attorneys. The
22 Commonwealth thinks that this is appropriate for the
23 jury to hear as it rebuts the *Bowden* defense the
24 defendant has laid out, not that she did not intend to
25 commit John O'Keefe, the defense has been that the

1 defendant is essentially -- what's been represented in
2 open court, was framed that she had no intent or
3 opportunity to commit these crimes. Further, that she
4 was not intoxicated at the time. So the Commonwealth
5 feels that the probative value significantly outweighs
6 the prejudicial value. It goes to her state of mind at
7 the time that the search was conducted.

8 Further, it also rebuts that there was any
9 impropriety in the police investigation, or that as the
10 defense has put it, that the police did not search any
11 -- or investigate any other potential culprits. The --
12 it also would go to the defendant's consciousness of
13 guilt at that time. This statement is before she
14 voluntarily gave an interview with law enforcement. It
15 goes to her state of mind prior to that interview.

16 And so for all those reasons, the Commonwealth
17 would suggest that that Google search is appropriate,
18 and it's not a typical case where it's an invocation of
19 counsel where law enforcement had not engaged her, and
20 it goes to her state of mind at that time prior to any
21 police involvement, and further, to rebut that there
22 was any improprieties in the police involved
23 investigation, or that they should have investigated
24 anyone else.

25 THE COURT: All right. And I appreciate, Mr.

1 Lally, you bringing this to our attention to give us
2 time to look at it. Ms. McLaughlin, I appreciate that
3 you provided a very strong limiting instruction
4 proposal. I'll hear you. Mr. Yannetti.

5 MR. YANNETTI: Thank you. Your Honor, you had asked
6 that I produce proof of the phone call from Michael
7 Proctor to my --

8 THE COURT: Oh, I didn't say proof. No, I asked if
9 that was coming into evidence.

10 MR. YANNETTI: Okay. Well, I'd like this marked for
11 identification for the purpose of this argument if I
12 could.

13 THE COURT: Sure.

14 MR. YANNETTI: I'll show counsel. It's been
15 redacted.

16 THE COURT: So let's have it marked for ID before I
17 hear you any further. So Madam Court Reporter needs to
18 mark it.

19 (Whereupon Exhibit LLL, Document Regarding Phone call
20 from Michael Proctor, was marked for identification.)

21 THE COURT: All right. And if I may have that.
22 Thank you very much. Just give me a minute, Mr.
23 Yannetti.

24 All right. So this is just that a call occurred,
25 right?

1 MR. YANNETTI: That a call was made from Michael
2 Proctor's personal cell phone number - you can see in
3 the last four digits there - to my client at 1:19 p.m.
4 on January 29, approximately eight minutes before she
5 calls to investigate a potential DUI attorney.

6 THE COURT: Okay. So focus on the law for me and
7 tell me why I should exclude this.

8 MR. YANNETTI: Of course. Yes. With regard to the
9 cases that the Commonwealth has cited, I think the
10 Court has seen, one of them is an unpublished opinion.
11 The other is a homicide case. It couldn't be more
12 distinguishable from this case.

13 With regard to the unpublished opinion, that
14 appears to have been a gun charge where the defendant
15 in that case did a search for a 9 millimeter handgun on
16 his cell phone. He did not ask for Google or search in
17 Google for a handgun attorney. He made a specific
18 inculpatory search that the Court ruled was irrelevant,
19 and it was not -- it was outweighed by the danger of
20 unfair prejudice.

21 In this case, we have a person being contacted by
22 the police and then doing what a citizen has every
23 right to do, which is to look for an attorney for
24 representation. There's zero probative value to that,
25 other than she's presumed to be innocent, and she's

1 seeking an attorney to defend that presumption of
2 innocence. That's it. There's zero probative value.
3 But there's the extreme and unfair prejudice in this
4 case. Your Honor, the limited instruction that
5 Commonwealth has provided, asks this Court to instruct
6 the jury whether her action in doing an Internet search
7 for an attorney indicates feelings of guilt by a
8 defendant. I can't even believe that argument --

9 THE COURT: So let's just focus on the --

10 MR. YANNETTI: I'm going to, Your Honor. I'm
11 flabbergasted.

12 THE COURT: So what I'm going to do then is I'm
13 going to stop you. So in the balancing act that I have
14 to do, I find that the probative value is -- is
15 outweighed by the prejudicial impact. All right. So
16 I'm not going to allow it in, Mr. Lally, in your case
17 in chief. Now, if you feel that through this witness or
18 through any other witness, Mr. Lally, that then is
19 admissible. I just ask that you come to sidebar
20 beforehand.

21 MR. LALLY: Absolutely, Your Honor.

22 THE COURT: Okay. All right. Let's bring Trooper
23 Guarino back in, please.

24 THE COURT OFFICER: Line up the jurors?

25 THE COURT: Yes, please.

1 (Witness present.)

2 THE COURT: All right. Trooper, if you have a bad
3 back and you need to stand, just stand at any time.

4 THE WITNESS: Thank you, Your Honor.

5 (Jury in.)

6 THE COURT: Mr. Lally.

7 MR. LALLY: Thank you, Your Honor. No further
8 questions for this witness, Your Honor.

9 THE COURT: All right. Mr. Yannetti.

10 MR. YANNETTI: Thank you, Your Honor.

11 Mr. Lally, you left your material here.

12 **CROSS-EXAMINATION**

13 **BY MR. YANNETTI:**

14 Q Trooper Guarino, you've testified that you disagree
15 in many respects with the findings of the defense
16 expert Rick Green, which he outlined in his affidavit
17 submitted in connection with this case, correct?

18 A Yes, that's correct. I'd like to ask you some
19 questions about your training and education and your
20 qualifications in the area of computer forensics.

21 You graduated from Westfield State University in
22 2003?

23 A Yes, that's correct.

24 Q You majored in criminal justice and mass
25 communications, correct?

1 A Yes, I double majored.

2 Q You chose not to major in computer science,
3 correct?

4 A Yes, that's correct.

5 Q Two years after graduating, you became a patrolman
6 in Norwood, correct?

7 A Yes, that's right.

8 Q The town of Norwood is right next to Canton; is it
9 not?

10 A Yes, it is.

11 Q You stayed as a patrolman in Norwood for ten years
12 with the Norwood Police Department, correct?

13 A Well, minus a stint in the National Guard, but,
14 yes.

15 Q You then became a Massachusetts state trooper in
16 2015?

17 A Yes, I did.

18 Q And you spent four years in the patrol division of
19 the Mass. State Police, correct?

20 A Yes, I did.

21 Q And that was until 2019?

22 A Correct.

23 Q And 2019 was the first time that you took a
24 forensic computer course; would you agree with that?

25 A No, that's not true.

1 Q Would you agree with me that since then, your
2 training has mainly consisted of online courses and
3 webinars.

4 A That is also not true.

5 Q All right. Okay. Well, you list, with regard to
6 your training, some in person trainings, sir, but you
7 had list one, two, three, four, five, six, seven,
8 eight, nine, ten, eleven, twelve, thirteen, fourteen,
9 fifteen, sixteen, seventeen, eighteen, nineteen --
10 actually, over twenty online courses; do you not?

11 A Yes, that was during COVID.

12 Q Well, 2019 was not during COVID, was it?

13 A 2020 was.

14 Q All right.

15 A When I took most of them.

16 Q I got you. But you say 2019 to 2020, in terms of
17 your online courses and webinars, correct?

18 A There's quite a few, yes.

19 Q All right. And with regard to some of the courses
20 that you were taking during that time period, would you
21 agree with me that one of them was "Introduction to
22 Computer Networks."

23 A So this -- that course was through the NW3C. They
24 just had a --

25 Q I didn't ask you where it was from. I asked you

1 whether one of the courses that you took was called
2 "Introduction to Computer Networks"?

3 A That's correct.

4 Q And another course that you took was introduction
5 to cell phone investigations, correct?

6 A Yes.

7 Q "Introduction to Previewing," correct?

8 A Yes.

9 Q You hold no degrees in the field of computer
10 forensics, do you?

11 A I hold certifications.

12 Q You hold no degrees in the field of computer
13 forensics or computer science, correct?

14 A Like college degree?

15 Q Correct.

16 A Yeah, correct.

17 Q You have no publications in the field of computer
18 forensics, do you?

19 A No, not yet.

20 Q And you've never taught a course in computer
21 forensics, have you?

22 A No.

23 Q All right. Well, as a Norwood police officer for
24 ten years and a Massachusetts State Trooper for nine
25 years, you would agree that you've written a lot of

1 police reports over the years; have you not?

2 A Yeah, you can say that.

3 Q Prior to becoming a Norwood police officer back in
4 2005, you attended a police academy, right?

5 A Yes, I did.

6 Q And at the academy, one area of focus was the
7 proper way to write a police report, was it not?

8 A Amongst others.

9 Q You were taught that it's important to write police
10 reports close in time to the events in question while
11 they're still freshest in your memory, correct?

12 A It's not necessarily the case.

13 Q Okay. So is it your testimony before this jury
14 that it's preferable to wait months before you submit a
15 police report on something that happened months ago,
16 sir?

17 A Well, it depends on the data that I'm using. If I
18 can't get into a phone then, yeah, I have to wait
19 months.

20 Q Okay. But once the information is received that
21 you need to write a police report, would you agree with
22 me that it's important to record it in a report as soon
23 as you can?

24 A No, I stand by my previous statement that as soon
25 as the data is available that I can do it, I will, and

1 if, you know, things come up, then, you know, I do it
2 when it's able.

3 Q So I think you just answered my question. You said
4 as soon as the data is available and you've completed
5 your investigation --

6 A I never said I completed. I said, if the data is
7 available then --

8 Q Well let's say you've completed your investigation,
9 sir. You're going to argue with me that it's
10 preferable not to wait to record that data in a report?

11 MR. LALLY: Objection.

12 THE COURT: Ask it -- ask it differently, Mr.
13 Yannetti.

14 Q You were also taught that it's important to include
15 all the important details in your police report,
16 correct?

17 A Again, it depends on the report I'm writing.

18 Q Okay. So in other words, there are times when
19 you're writing a police report when you intentionally
20 leave out important details, Trooper, is that your
21 testimony before this jury?

22 MR. LALLY: Objection.

23 THE COURT: I'll allow that question. Is that what
24 you do, Trooper?

25 THE WITNESS: No, ma'am.

1 Q Okay.

2 THE WITNESS: Your Honor.

3 Q So you would agree with me, going back to my
4 question, that it is important to include all the
5 important details in your report; is it not?

6 A Again, it depends on the report that I'm writing.
7 There's some data that goes in, there's some that
8 doesn't. I can't have everything in again for a phone
9 -- I'm speaking to technically phone reports or cell
10 phones -- excuse me -- computers. I can't include
11 everything. That's why we have the program that if I
12 need to add something via Cellebrite or Axiom, I can
13 create a report through that. If I did a handwritten
14 report for everything, maybe thousands of pages for the
15 amount of data in these devices.

16 Q One purpose of writing a police report is to share
17 information with your fellow investigators; is it not?

18 A I suppose so.

19 Q Another purpose of writing a police report is to be
20 fair to the people that you're investigating by
21 explaining as best you can what happened, correct?

22 A I don't understand that question that I'm ...

23 Q Okay. The fact is you did write some early police
24 reports in this case dated February 4, 2022, just six
25 days after John O'Keefe was found mortally wounded on

1 Brian Albert's front lawn, correct?

2 A That is correct.

3 Q When you wrote those police reports, you knew this
4 was a homicide investigation, correct?

5 A I was told that it was believed to be, yes.

6 Q So that underscored the importance of being
7 accurate and truthful, correct, especially in a
8 homicide investigation?

9 A I write my reports no matter what the investigation
10 is the same exact way.

11 Q And the purpose of one of your February 4, 2022,
12 reports was to explain how you came into possession of
13 John O'Keefe's cell phone, and to note the extraction
14 that you did on the phone. Do you recall that report?

15 A Yes, I do.

16 Q And before writing that particular report, you
17 spoke with Trooper Michael Proctor, did you not?

18 A I received the phone from him, but I --

19 Q I'm sorry?

20 A I received the phone from him, originally, yes.

21 Q Okay. And when you received the phone, the two of
22 you did not remain mute, right? The two of you chatted?

23 A I don't remember the exact conversation.

24 Q But there was a conversation, correct?

25 A I'm sure there was.

1 Q And you recorded what Michael Proctor told you
2 about that cell phone in your February 4, 2022, report,
3 did you not?

4 A No, I didn't.

5 Q Michael Proctor told you that on Saturday, January
6 29th of 2022, he and Sergeant Bukhenik had responded to
7 34 Fairview Road in Canton; did he not?

8 MR. LALLY: Objection.

9 THE COURT: I'll allow that.

10 A No, he didn't.

11 Q Well, you wrote in your very first sentence in that
12 report the following, quote, on Saturday, January 29 --

13 MR. LALLY: Objection.

14 Q -- 2022, Trooper Michael Proctor and Sergeant Yuri
15 Bukhenik of the Norfolk County District Attorney's
16 Office responded to the unattended death of John
17 O'Keefe at 34 Fairview Road in Canton. Those were your
18 words, were they not?

19 THE COURT: All right. So the objection is
20 sustained. You can ask it differently.

21 Q Did Michael Proctor tell you that he had received
22 or retrieved John O'Keefe's cell phone from 34 Fairview
23 Road in Canton?

24 MR. LALLY: Objection.

25 THE COURT: I'm going to allow that.

1 A No, I didn't know where it was retrieved from.

2 Q You didn't know where it was retrieved from?

3 A Correct.

4 Q All right. But you did include in your report that
5 while Proctor and Bukhenik were on scene, they
6 retrieved the cell phone of John O'Keefe, correct?

7 A At some point during the day, they did. I don't
8 know where from, so there's multiple --

9 Q I'm asking about your report. You know, I'm
10 questioning you about your report.

11 A No, I understand, and I'm explaining. I don't know
12 what seems --

13 Q You don't get to explain, sir, most respectfully,
14 until Mr. Lally questions you.

15 MR. LALLY: Objection, Your Honor.

16 THE COURT: Okay. So no comments. I think to speed
17 things along, do you have that -- your report with you?

18 THE WITNESS: I do, Your Honor.

19 THE COURT: I think it'll make it easier, Mr.
20 Yannetti.

21 MR. YANNETTI: Of course.

22 Q Can you read the first two lines --

23 THE COURT: Let him grab it.

24 A Go.

25 Q Can you read the first two lines to the jury,

1 please.

2 A Yep. "On Saturday, January 29, 2022, Trooper
3 Michael Proctor and Sergeant Yuri Bukhenik of the
4 Norfolk District Attorney's Office responded to the
5 unattended death of John O'Keefe at 34 Fairview Road in
6 Canton. Through his investigation, it was found O'Keefe
7 was the victim of a motor vehicle homicide. While on
8 scene, Trooper Proctor secured O'Keefe's phone and
9 brought it to the Norfolk DA's office for forensic
10 analysis.

11 Q Okay. So you'd agree with me that you included
12 that clause, "While on scene, they secured his phone,"
13 did you not?

14 A I did write that.

15 Q Okay. And that was back on February 4th of 2022,
16 correct?

17 A Yes, it was.

18 Q Within six days of John O'Keefe being found
19 mortally wounded on Albert's lawn, correct?

20 A Yes, sir.

21 Q And at that time you knew that the crime scene was
22 34 Fairview Road, correct?

23 A No.

24 Q Yet you put in your report, "while on scene," did
25 you not?

1 A Yes, I don't know what scene they recovered from. I
2 know they went multiple places on the 29th. They
3 didn't get back to me until 7:30 that night almost when
4 I first got the phone.

5 Q But you'd agree with me that the Canton Police
6 Department wasn't the crime scene, correct?

7 A I never said crime scene in my report. I wrote,
8 "scene."

9 Q Okay, well, Canton Police Department was not the
10 scene of any crime, was it?

11 A I don't know. I don't believe so.

12 Q You don't know if the Canton Police Department was
13 the scene of a crime, is that --

14 A I don't think it was.

15 Q You don't think it was. Okay. Now, in that report,
16 you were trying to establish the chain of custody of
17 that phone, right? Because you described where it was
18 found, where it was taken and who had possession of it,
19 correct?

20 A I said -- it never said where it was taken. I said
21 the phone was recovered on scene by Trooper Proctor.
22 Again, I don't know where it was recovered from. I did
23 find out later it was at Canton PD.

24 Q Well, hold on a second. Again, we're focusing on
25 your report.

1 A I know I'm reading it.

2 Q As opposed to details you want to fill in now,
3 okay?

4 A Okay.

5 Q With regard to you just testified that you never
6 said where it was taken yet, previously you said it was
7 taken to you, was it not?

8 A No, I said recovered from the scene/location.

9 Q Did Trooper Proctor take the phone to you and
10 hand --

11 A Yes.

12 Q -- it to you?

13 A Yes, he did.

14 Q Okay. So it was taken to you, correct?

15 A That is correct.

16 Q All right. So you described in your report where it
17 was found, because you said, "while on scene," correct?

18 A Correct.

19 Q And where it was taken, it was taken to you
20 correct?

21 A Yes, sir.

22 Q And who had possession of it, which was initially
23 Trooper Proctor in terms of your observations, and then
24 you, correct?

25 A That is who brought me the phone to the DA's

1 office, yes.

2 Q And you would agree with me the chain of custody of
3 a piece of evidence is an important detail in any
4 criminal investigation, isn't it?

5 A Yes.

6 Q Would you agree with me that someone reading your
7 report or listening to it, as the jury listened today,
8 would understand you to be saying that Michael Proctor
9 seized John O'Keefe's cell phone at 34 Road in Canton?

10 MR. LALLY: Objection.

11 THE COURT: Sustained.

12 Q All right. I'd like to ask you some questions
13 about the extraction that you discussed in that same
14 February 4, 2022, report, the very same report.

15 In that report, after you name the tools that you
16 use to extract data from the phone, you indicated that
17 a copy of that cell phone extraction was placed on a
18 state police server, or was it a DA's office server?

19 A DA's office server.

20 Q Okay. On a server so that it could be accessed
21 there, correct?

22 A That is correct.

23 Q But that extraction you placed on the server did
24 not include all the potential data on John O'Keefe's
25 phone, did it?

1 A How do you mean?

2 Q Well, didn't you indicate in your report that the
3 extraction was not inclusive of all potential data
4 contained within the device?

5 A No, that's not true.

6 Q Well, the extraction that you did contained
7 communications, iOS messages, phone calls, social media
8 communications between John O'Keefe and Karen Read,
9 correct?

10 A Yes, that's correct.

11 Q And it contained communications between John
12 O'Keefe and Jennifer McCabe?

13 A Yes, that's true.

14 Q It contained communications between John O'Keefe
15 and Kerry Roberts?

16 A I can't recall.

17 Q All right. But it did not include any
18 communications between John O'Keefe and Julie Albert,
19 did it?

20 A Again, I can't recall.

21 Q And again, I'm talking about that initial
22 extraction. That initial one didn't include any
23 communications between John O'Keefe and Chris Albert,
24 did it?

25 A I only created one extraction of John O'Keefe's

1 phone.

2 Q All right. That extraction report also did not
3 include any location data, did it?

4 A No, it did.

5 Q You didn't note any location data in that initial
6 report, did you?

7 A In the February 4, report?

8 Q Correct.

9 A I didn't go through the data at that point.

10 Q All right.

11 A This is just my extraction report saying that I got
12 the phone. It was extracted and placed onto the
13 server, and then I wrote, this report is not inclusive
14 of all potential evidence -- excuse me -- potential
15 data contained within this evidence.

16 Q When was the first time that you reported on
17 location data in this case?

18 A I don't remember.

19 Q It wasn't until April of 2023, correct?

20 A Oh, there was a reason for that.

21 Q Well, I didn't ask you if there was a reason for
22 it, sir. You understood my question, didn't you?

23 A That's correct. My first report regarding was in
24 January.

25 Q And we're talking about John O'Keefe's phone now

1 here?

2 A Yeah.

3 Q You did not report on the location data on John
4 O'Keefe's phone until April of 2023, correct?

5 A I didn't look at the extraction initially.

6 Q And you also did not report on any Apple Health
7 data until the spring of 2023, correct?

8 A Again, I didn't look at the phone extraction.
9 Trooper Proctor would have looked at it. I would have
10 loaded it and given it to him.

11 Q Okay. So Trooper Proctor had access to the phone
12 first, and then you took care of it, correct?

13 A He had access to the extraction that I would load
14 into Cellebrite for him to look at, but you can't
15 change the data. That is correct.

16 Q Okay. And you would agree with me that you didn't
17 address John O'Keefe's health or location data in any
18 formal report until that April 23, report, correct?

19 A That's correct. I never went through it.

20 Q Right. And you submitted your report in April of
21 2023, after you became aware of an affidavit filed by
22 the defense expert Rick Green in which Mr. Green
23 extracted and analyzed John O'Keefe's location data and
24 his movements according to Apple Health Data; isn't
25 that correct?

1 A Yes, that is correct.

2 Q Before Rick Green submitted that affidavit, no
3 member of the state police homicide investigation team,
4 including you, had ever looked at, or at least reported
5 on the location data for anyone present at 34 Fairview,
6 correct?

7 A For the devices that we had, sir?

8 Q The -- for John -- for John O'Keefe's device, for
9 Jennifer McCabe's device.

10 A I can't speak to that. I don't know.

11 Q All right. But you didn't, correct?

12 A Again. I didn't look at the extractions until
13 later.

14 Q Right. So you hadn't looked at John O'Keefe's
15 location data in particular prior to Richard Green
16 pointing out the location data in his affidavit,
17 correct?

18 A Again, I don't -- I can't -- I don't know. I wasn't
19 asked to look for that data when I did look at it.

20 Q (Indiscernible), correct?

21 A Yes, there's no report until then.

22 Q All right. Same with Jennifer McCabe's location
23 data, you didn't report on that either, correct?

24 A I didn't look at Jen McCabe's phone.

25 Q All right. You didn't report on Brian Albert's or

1 Colin Albert's, or Brian Higgins' location data, would
2 you agree with that?

3 A I didn't have any of their phone extractions to get
4 that data, so I wouldn't be able to anyways.

5 Q But when you finally did check the location data, I
6 want to ask you about your testimony on direct
7 examination that you believe that at a certain point
8 with regard to John O'Keefe's phone, the accuracy of
9 the GPS points was within 3 feet; do you remember that
10 testimony?

11 A Yes, sir.

12 Q All right. Can you show me where in any of your
13 reports you specify that the GPS points are accurate
14 within 3 feet?

15 A I don't know. I don't have it in front of me. In
16 my reports or the Axiom report?

17 Q You reports. Yeah, no, any -- reports that you
18 have in front of you or any that you reviewed. Where is
19 that?

20 A What do you -- that I wrote?

21 Q Is it in writing anywhere, sir?

22 A Yes. I wrote in my report that we believe we were
23 within 3 feet of the latitude and longitude points that
24 were mapped in SARTopo when we went to --

25 Q Which report is that?

1 A That is the second report that I did, sir.

2 Q The May of 2023 report?

3 A May 9, 2023.

4 Q All right.

5 MR. YANNETTI: If I may just have a moment.

6 A Yep. It's page -- it'll be page 4 or 5. It should
7 be in the top there. Paragraph 9. You can read it if
8 you'd like.

9 Q Hang on. Would you agree with me in paragraph 9,
10 there is nothing that mentions that the accuracy is
11 within 3 feet?

12 A From the program?

13 Q No. I'm asking you about a report that you
14 authored that you just mentioned to this jury.

15 A It's in paragraph -- paragraph 12, I'm sorry. It
16 says, "Trooper Proctor and I began to measure."

17 THE COURT REPORTER: I'm sorry. That was a little
18 too fast.

19 A I'm sorry. I wrote, "Trooper Proctor and I began
20 measuring the -- "

21 Q I'm not asking you to read it.

22 A Oh, okay.

23 Q You were mentioning paragraph 12 and you --

24 A Yes, sir.

25 Q -- and you were talking about one particular spot

1 in that, correct?

2 A Yes, that is the spot that we --

3 Q All right.

4 A -- pointed on our --

5 Q Now, with regard to John O'Keefe's phone, would you
6 agree with me that it's important to properly handle
7 and secure a cell phone that is seized in connection
8 with a homicide investigation?

9 A Yes.

10 Q Was it important in this investigation to properly
11 handle and secure John O'Keefe's cell phone since he
12 was the homicide victim?

13 A I mean, it was. We locked it in a secure evidence
14 lab.

15 Q All right. Well, you testified that the first time
16 you reported on in your investigation or your
17 evaluation of the location data, that was in your April
18 24, 2023, report?

19 A Correct.

20 A Yes, sir.

21 Q And in that report, you revealed that you looked at
22 his location data using Axiom software, correct?

23 A Yes, sir.

24 Q And Axiom is a competitor of Cellebrite?

25 A You could you say that. Yeah.

1 Q And Axiom is relied on by law enforcement across
2 the country?

3 A I believe so.

4 Q And you relied on it here in terms of this issue of
5 the location data, did you not?

6 A I used multiple programs, but, yes, I used Axiom as
7 well.

8 Q And regarding the location data that you examined
9 with regard to John O'Keefe's phone, you noticed or you
10 noted, I should say, that after a period of no speed
11 having been registered for a period of time, John
12 O'Keefe's cell phone started registering movement at
13 6:04 or 6:15 a.m.?

14 A 6:15 a.m.

15 Q 6:15 a.m. And that's actually 6:15 and 36 seconds,
16 correct?

17 A I don't have it in front of me, but I believe
18 that's correct.

19 Q Sounds right?

20 A Yeah.

21 Q And at that point, his phone registered a speed of
22 .0484 meters per second?

23 A I just want to confirm.

24 Q Sure.

25 A Is that the second report or the first report? I'm

1 sorry. Here it is, yep, .0484.

2 Q Point zero four eight four meters per second?

3 A Yes.

4 Q And that's at 6:15 and 36 seconds?

5 A Yes, it is.

6 Q All right. So now, as you were examining that data,
7 sir, you certainly knew from this investigation by that
8 point that when the phone was moving, according to that
9 data, at 6:15 and 36 seconds on January 29th of 2022,
10 John O'Keefe had already been found mortally wounded
11 and incapacitated, correct?

12 A From the voicemail message, that's how I was able
13 to -- I don't know the exact time frames that he was
14 found and transported, but I know 6:08 from Ms. Read's
15 voicemail that the 911 call is made.

16 Q Okay.

17 A And they are on scene.

18 Q I think we're talking over each other here --

19 A Yeah.

20 Q -- because what I'm asking is you knew that by 6:15
21 and 30 seconds in the morning on January 29, John
22 O'Keefe had already been incapacitated and mortally
23 wounded. That was my question.

24 A Oh, yes, that's -- sorry. I misunderstood.

25 Q So you knew from your investigation that that mean

1 -- meant it could not have been John O'Keefe moving
2 with his phone at 6:15 and 36 seconds, correct?

3 A That is correct.

4 Q It had to be somebody else, correct?

5 A Yes.

6 Q Would you agree with me that once investigators
7 took possession of John O'Keefe's phone, any movement
8 of his phone after that would not help in your homicide
9 investigation, would it?

10 A I don't understand.

11 Q Well, in other words, John O'Keefe's been
12 incapacitated.

13 A Yes.

14 Q Somebody from law enforcement seizes his phone.
15 Would it help your investigation, or the investigation
16 of the Norfolk detective's unit to track and record
17 location data on that phone after 6:15 a.m.?

18 A Well, it's there. I did look at it. It goes to the
19 Canton PD and then later comes to the office.

20 Q (Indiscernible.) I didn't ask if it's there. I know
21 it's there. I am asking you, does that help you in your
22 investigation of a potential -- or of a homicide, to
23 track the phone and have that location data recorded on
24 the phone after John O'Keefe could not have been the
25 one moving with it?

1 A No, not necessarily.

2 Q In fact, if the phone is manipulated in some way
3 after investigators take possession of it, that could
4 potentially harm an investigation, couldn't it?

5 MR. LALLY: Objection.

6 THE COURT: Sustained.

7 Q Well, to preserve the integrity of the data on the
8 phone as it existed before the police took custody of
9 the phone, there is a way to stop the phone from
10 recording location data, again after the police take
11 custody of the phone, isn't there?

12 A Yes, if you can place it into airplane mode.

13 Q Yes. You mentioned on direct examination that it
14 could be accomplished by putting the phone into
15 airplane mode, correct?

16 A That is correct, sir.

17 Q But when that phone was seized, no investigator put
18 the plane into airplane mode that early morning,
19 because you know that location data was found on that
20 phone, correct?

21 A I don't know when it was placed in airplane mode.

22 Q But you know it wasn't by 6:15 a.m., correct?

23 A That is correct.

24 Q All right. And there's also another way to prevent
25 any signal from entering or exiting the phone. You'd

1 agree with that?

2 A Yes, there is.

3 Q During your direct examination, you mentioned the
4 concept of a Faraday bag.

5 A That is correct, sir.

6 Q A Faraday bag has special fabric that blocks
7 electromagnetic signals entirely, does it not?

8 A Yes, sir.

9 Q So putting the phone into a Faraday bag would be
10 another way to stop the phone from recording location
11 data while the phone's in police custody, correct?

12 A Yes, sir.

13 Q And you'd agree with me that during that early
14 morning hours, as of 6:15 a.m. and thereafter, no
15 investigator in this case put that phone into a Faraday
16 bag on January 29, correct?

17 A Not to my knowledge.

18 Q In fact, after John O'Keefe's cell phone started
19 registering movement at 6:15 and 36 seconds in the
20 morning on January 29, it continued to record location
21 data the rest of the morning until 11:56 and one second
22 a.m. on January 29, correct?

23 A I don't know the exact end time, but I know it does
24 have GPS data points throughout the day.

25 Q So you would agree with me that for several hours

1 after the police had the phone, it was not put in a
2 Faraday bag and it was not put into airplane mode,
3 correct?

4 A That is correct.

5 Q All right. Now with regard to the voicemails that
6 you've previously testified to and that the jury has
7 heard and they've been introduced into evidence. You
8 had testified on direct examination that Karen Read's
9 phone connected to the WiFi at 1 Meadows Ave. at
10 approximately 12:36 in the morning?

11 A Yes, sir.

12 Q So you can testify based on that, that by 12:36 in
13 the morning, Karen Read was not at 34 Fairview,
14 correct?

15 A That's correct.

16 Q And that was the first of those voicemails that you
17 testified to, correct? That was the I hate you
18 voicemail?

19 A Yes, that's 12:37, correct.

20 Q Okay. And that voicemail and every other voicemail
21 that the jury heard, was left after Karen had left 34
22 Fairview, correct?

23 A Yes, sir.

24 Q And except for the one at, you know, after 6:00 in
25 the morning, the four minute one when she went back,

1 you heard that one, but all the other ones were
2 apparently left when she was at 1 Meadows, correct?

3 A I can't speak to where she was, but.

4 Q But she wasn't at 34 Fairview, correct?

5 A Yes, that's correct. She wasn't at 34. And you
6 would agree with me, based on those voicemails and what
7 you know about them and what we've just discussed, that
8 no one at 34 Fairview, including Jennifer McCabe, could
9 have witnessed Karen Read outside that residence at
10 12:45 a.m., correct?

11 A No, I don't believe so.

12 Q So you would agree with me? No one could have,
13 including Jennifer McCabe, could have seen her at 12:45
14 at 34 Fairview?

15 A As I said, she auto connects to the WiFi at 12:36,
16 so, no, she would have been there.

17 Q All right. Now we've talked about the findings of
18 or the fact that you reviewed the findings of Rick
19 Green by reading the affidavit that he submitted,
20 correct?

21 A Yes, sir.

22 Q And you learned in that affidavit that Rick Green
23 was able to track not only when John O'Keefe arrived at
24 34 Fairview, but also the route that he and Ms. Read,
25 took to get there on January 29, correct?

1 A I don't recall his report fully, but.

2 Q You learned that he was able to accomplish that by
3 examining the data from the app Waze that you spoke of,
4 correct?

5 A Yes, I did find that myself.

6 Q All right. And Waze is spelled W-A-Z-E, correct?

7 A Yes.

8 Q All right. And you've previously testified it's a
9 commonly used app for driving directions and
10 navigation?

11 A Yes, sir.

12 Q And regarding your analysis of the phone, you
13 learned that there was Apple Health data from John
14 O'Keefe's phone on January 29th of 2022, correct?

15 A That is correct.

16 Q And Apple Health data can reveal a number of steps
17 that a person has taken during a given time period, as
18 well as whether that person is going up or downstairs,
19 correct?

20 A Yes.

21 Q And on John O'Keefe's phone, you learned that there
22 was Apple Health data that tracked his steps from the
23 time he's seen on surveillance video leaving the
24 Waterfall Bar and Grill and moving forward after that,
25 correct?

1 A I don't know anything about the Waterfall Bar
2 video. I just have the time stamp from the phone
3 showing it at around 12:12 --

4 Q Okay.

5 A -- at the waterfall.

6 Q And it actually was between twelve-eleven and nine
7 seconds, and then the ending period of that first time
8 period was twelve-twenty-one and five seconds? And --

9 A Oh, yes, from the health, thank you, yes. Yeah.

10 Q Okay. From the Apple Health. And the data showed
11 that he took a total of 170 steps between that time
12 period, correct?

13 A That's what the phone registered, yes.

14 Q All right. And regarding those 170 steps, isn't it
15 true that this data from Apple Health signifies that
16 hundred and seventy steps took place at some point
17 during that ten minute approximate time period?

18 A No.

19 Q So is it your understanding that those 170 steps
20 all took place at 12:11?

21 A No. Again, like I said, the phone is a high tech
22 pedometer. It doesn't mean that steps were taken. It
23 means the phone was manipulated in a way that it
24 believed it was moving and taking steps.

25 Q Oh, I see your objection. Okay. So --

1 A Sorry.

2 Q Yeah, let's assume they were steps for the purpose
3 of this discussion here.

4 A Yeah.

5 Q Okay. Because -- and they could have been steps,
6 correct?

7 A They could have been, yes.

8 Q All right. So let's assume --

9 A But no one way to prove.

10 Q Let's assume that for now.

11 A Okay.

12 Q Assuming there are 170 steps taken, that could have
13 meant that John O'Keefe took 170 steps beginning at
14 12:11 within that time period, correct?

15 A It's saying -- again, the time frame that he gave
16 me is 12:11 to 12:21?

17 Q Right. Yeah, so in other words, he couldn't
18 started walking at 12:11, correct?

19 A Yes.

20 Q All right. But he also could have taken that 170
21 steps closer in time to 12:21, correct?

22 A Well, at that point, he's in the car.

23 Q I'm not asking about where he was --

24 A He could not have been, no.

25 Q -- I'm just -- I'm just asking about with -- what

1 the data shows.

2 A And I'll say no.

3 Q If it shows 170 steps between 12:11 and 12:20 --
4 12:21, and strictly based on the data, you don't know
5 where those 170 steps took place within that ten
6 minutes, correct?

7 A To a degree, yes.

8 Q Okay. And it's possible it could have been toward
9 the beginning, toward the end, or maybe fairly evenly
10 spaced, right? You just know that there are hundred
11 seventy steps that were taken in that ten-minute time
12 frame, correct?

13 A Again, that's assuming that they are steps.

14 Q Right. And again, I'm asking you from the data
15 itself.

16 A Again, the phone says it steps, doesn't mean they
17 are.

18 Q All right. Well, the Apple Health data also showed
19 a total of 80 steps between 12:21 and 12:24?

20 A Correct.

21 Q As part of your investigation of this case, were
22 you aware that there was a 12:23 text message from Ryan
23 Nagle to Julie Nagle in which Ryan texted his sister
24 Julie he had arrived at 34 Fairview?

25 MR. LALLY: Objection.

1 THE COURT: Sustained. You can ask it differently.

2 Q In any case, you would agree with me that 12:23 is
3 between 12:21 and 12:24, correct?

4 A That is correct.

5 Q And that is the 12:21 to 12:24 time frame, where
6 the Apple Health data showed that the user of John
7 O'Keefe's phone took 80 steps, correct?

8 A Yes.

9 Q All right. Now John O'Keefe's Apple Health data
10 also showed that he climbed up or down three flights of
11 stairs between 12:21 and 12:24, correct?

12 A Yes.

13 Q And that's the same period in which the data
14 reflects 80 steps, correct?

15 A It's off by about 12 seconds. It's 12:22:22. I'm
16 sorry. 12:24 and 22 seconds was the ending for the
17 stamps, but 12:24 and 37 seconds.

18 Q Okay. Approximately?

19 A Approximately, yes.

20 Q All right. And regarding going up and down those
21 three floors, Apple does not provide data precise
22 enough to determine when within that range the three
23 floors were transversed, correct?

24 A No, there was a second point at 12:22 and 14
25 seconds that had specifically on stairs.

1 Q Okay. And you would agree with me that -- and
2 again, assuming that they were stairs as Apple Health
3 data reflects, those stairs could have been ascended or
4 descended toward the beginning, toward the end, or
5 throughout that three minute time period, correct?

6 A In this case, no, because there's a set point
7 that's in the Cellebrite report that shows it's 12:22
8 and 14 seconds.

9 Q All right. Finally, his Apple Health data also
10 showed a total of 36 steps between 12:31:56 and
11 12:32:16, correct?

12 A Yes, that is correct.

13 Q All right. So I would like to direct your attention
14 to your May 9, 2023, report, which is the second report
15 that you wrote that we've already referenced?

16 A Yes, sir.

17 Q Specifically paragraph 15.

18 A Okay.

19 Q You wrote that O'Keefe's health data in Cellebrite
20 shows him ascending, descending three flights of stairs
21 at 12:22 and 14 seconds. Did I read that accurately?

22 A Yes, sir.

23 Q And the native locations in Cellebrite and the
24 cached locations in Axiom both show O'Keefe's phone
25 location by the intersection of Oakdale Road and Pine

1 Cone Road, which is in front of 36 Oakdale and which is
2 approximately a little over a half mile from 34
3 Fairview. Did I read that section essentially correct?

4 A Yes, sir.

5 Q All right. Do you stand by the statement that he
6 ascended and descended three flights of stairs
7 precisely at 12:22 and 14 seconds?

8 A I'm going by what Cellebrite has given me from that
9 time point, and that's what I used.

10 Q Isn't it true that what the Apple Health data
11 actually state is that John O'Keefe's phone went up and
12 down three flights of stairs sometime within the time
13 period that began at 12:22:14 and ended at 12:24:37?

14 A I don't -- I can't speak to it. I don't know. This
15 is what, again, I'm looking at the report. This is what
16 the information that is parsed out of the phone is
17 giving me.

18 Q Right. I'm just asking about the data itself. It
19 gives you that time period and tells you three flights
20 of stairs, correct?

21 A Yes, that is correct.

22 Q All right. So assuming that those three flights of
23 stairs were ascended or descended closer in time to
24 12:22:14, which was within that time period, that would
25 still give him time to arrive at 34 Fairview within a

1 couple of minutes later, would it not?

2 A I'm sorry, the time?

3 Q Yeah. So we have a time period that you've agreed
4 with which is 12:24:14 ending at 12:24:37, right? A
5 little over a couple of minutes? Two minutes and
6 twenty-three seconds.

7 A Yeah, about that.

8 Q All right. So the three flights of stairs again,
9 just according to the data, could have been ascended or
10 descended at the start of that time period, correct?

11 A No. I'm confused what you're trying to say. So
12 you're saying that he's at the house already at 12:22?

13 Q I'm not asking about the house. I'm asking about
14 the data.

15 A No, I know, but I'm asking about the -- when you're
16 saying he arrives in that data range.

17 Q No. What I'm -- what I'm --

18 A I'm confused.

19 Q I'm strictly asking you just to look at the data.

20 A Yeah.

21 Q And you agree with me, whenever there's a time
22 period in Apple Health terms either steps or stairs,
23 you can't pinpoint just from the data when they
24 occurred within that time period, correct?

25 MR. LALLY: Objection. Your Honor, it may be

1 helpful if counsel could refer to which data he's
2 talking about and not just keep saying --

3 MR. YANNETTI: I do.

4 MR. LALLY: All I'm hearing is data.

5 MR. YANNETTI: I thought --

6 THE COURT: Do you know which data Mr. Yannetti is
7 referring to specifically?

8 A I'm slightly confused. I know you said that that
9 time frame that I wrote in my report for that 12:21 to
10 12:24, and then, as I stated before Cellebrite shows a
11 specific time point of 12:22 and 14 seconds when the
12 stairs are ascended/descended. So that's -- that's why
13 I'm confused.

14 Q Right. We're going to get to that.

15 A Okay.

16 Q I'm not asking you about that. I'm asking you about
17 the fact that there's a time period and you can't place
18 where within that time period, just based on that data
19 itself.

20 A That's what's recorded and shown to me. So again, I
21 -- that's what it's showing. I can't say otherwise.

22 Q Your conclusion was that John O'Keefe could not
23 have been at 34 Fairview Road at 12:22 and 14 seconds
24 because Waze put him on Oakdale Road about a half mile
25 away, correct?

1 A Twelve. Yes, correct.

2 Q All right. And that caused you to disregard the
3 Apple Health data or to attribute it not to steps or to
4 stairs, because he was a half mile away between that
5 12:22 and 12:24 time period, correct?

6 A Yes, I attribute it to movement.

7 Q All right. So I want you to assume for a moment,
8 Trooper, that John O'Keefe's phone location actually
9 showed him on Oakdale Road three minutes earlier, at
10 12:19 a.m., okay? If you -- do you have that in mind?

11 A Okay.

12 Q All right. With that assumption, would you agree
13 with me that the Apple Health data about him taking
14 eighty steps and climbing up or down three floors at 34
15 Fairview Road would make more sense?

16 MR. LALLY: Objection.

17 THE COURT: Sustained.

18 MR. YANNETTI: May we approach, Your Honor?

19 THE COURT: Sure.

20 (Sidebar commences:

21 MR. LALLY: Your Honor, the Commonwealth would
22 submit it's an improper question. It's asking a
23 hypothetical of this witness and asking hypothetical --

24 THE COURT: Asking what?

25 MR. LALLY: A hypothetical and asking for

1 situations, but he's also asking a hypothetical that's
2 not borne out by any evidence.

3 MR. YANETTI: So it will be. That's the whole
4 purpose of the hypothetical. I'm going to get into
5 this with the trooper. There are three separate
6 photos, and I can show this to -- it's Mr. Lally.
7 There are three separate clocks on an iPhone 11. One
8 is monotonic tone, the other is baseband time, the
9 other is display date and time. All of them have
10 different times on them. They can vary by seconds. I
11 have an example on John O'Keefe's phone right here
12 where they vary by three minutes. This Trooper is not
13 going to know which clock was used.

14 THE COURT: Okay. You can do that, but you can't
15 ask him if something makes more sense than something
16 else.

17 MR. YANETTI: Okay. I can move on from that.

18 THE COURT: Okay.

19 MR. YANETTI: Thank you.

20 end of sidebar.)

21 Q Sir, are you aware that apps on an iPhone may pull
22 data from three different clocks when they're time
23 stamping location data?

24 A You mean like Mac absolute time or Apple --

25 Q I'm asking you. Are you aware --

1 A Multiple time stamps that are in an iPhone,
2 correct.

3 Q That's not my question. My question was, are you
4 aware that an app on an iPhone may pull data by
5 choosing from three different clocks when it time
6 stamps location data?

7 A Yes.

8 Q What are those three separate clocks?

9 A It depends on the program. It could be the Mac
10 absolute time. It could be the Unix epoch time. And
11 sorry, there's, like, two others, I don't remember them
12 all off the top of my head.

13 Q What about with regard to John O'Keefe's actual
14 iPhone, did you research what clocks were available for
15 apps to pull data from?

16 A No, I didn't.

17 Q Are you aware that those three clocks can vary in
18 time?

19 A Yes.

20 Q Sometimes for a matter of seconds.

21 A What do you mean? So --

22 Q In other words, the three clocks could be seconds
23 apart, correct?

24 A I would have to see the data.

25 Q All right. And you would agree with me that

1 sometimes the clocks could be off by three minutes,
2 correct?

3 A No. Again, I would have to see the data.

4 MR. YANNETTI: May I approach?

5 THE COURT: Yes. Mr. Lally, did you get a chance
6 to look at that?

7 MR. LALLY: No.

8 Q Okay. Trooper, I'm going to place this before you
9 and ask you to review it, directing your attention
10 specifically to what is marked "Process 3434."

11 A Okay.

12 Q Do you see the process 3434 highlighted in blue on
13 what I've placed before you?

14 A Yes, sir.

15 Q And with regard to the right side of that exhibit,
16 do you also see process 3434 with more information on
17 the right side?

18 A Yes.

19 Q And do you see the three different clocks that are
20 listed on that printout?

21 A I do.

22 Q What are those three different clocks?

23 A I'm sorry. It's a bit blurry. Mono -- monotonic,
24 date time, baseband date time, and then a display date
25 time.

1 Q And looking at that, do you recognize that as being
2 information that was available from John O'Keefe's
3 phone from the extraction?

4 A Yes.

5 MR. YANNETTI: I would offer that as an exhibit,
6 Your Honor.

7 THE COURT: Any objection, Mr. Lally.

8 MR. LALLY: No, Your Honor.

9 THE COURT: Okay. What are we going to call that,
10 Mr. Yannetti? How are we going to refer to that?

11 MR. YANNETTI: It could be called, you know, a
12 printout regarding 3434.

13 THE COURT: Okay.

14 MR. YANNETTI: Or a print out from John O'Keefe's
15 phone.

16 (Whereupon Exhibit No. 640, Printout from John
17 O'Keefe's Phone, was marked as an exhibit.)

18 THE COURT: Thank you.

19 MR. YANNETTI: Thank you.

20 Q Now you have Exhibit 640 in front of you, sir.
21 Looking at 640, is it clear to you that those three
22 clocks were not in sync regarding that one process
23 number?

24 A Yes.

25 Q In fact, the monotonic clock regarding this

1 particular Waze artifact from John O'Keefe's phone says
2 2:22 a.m. while the baseband and display clocks have
3 time stamps three minutes earlier, correct?

4 A Yes.

5 Q So if there's a three minute difference between the
6 clocks -- well, strike that.

7 Do you know with regard to that 2:22 a.m. location
8 data on Waze, do you know which clock Waze was using
9 for that or the iPhone was using with Waze?

10 A I don't. I didn't look through cell(ph) or Axiom. I
11 was using Cellebrite for that.

12 Q Okay. But certainly that would have been available
13 to you, had you looked at it, correct?

14 A Well, this is the -- the artifact you showed me is
15 from the power log. It has nothing to do with the GPS,
16 so it's not correct.

17 Q You could have looked at that exhibit, right, the
18 information in that exhibit to see the three different
19 clocks, sir?

20 A Yes, but I can explain why this is incorrect.

21 Q All right. Maybe Mr. Lally will ask you. All
22 right?

23 A Sounds good.

24 Q But you would agree with me if there's a three
25 minute difference between the clocks and you don't know

1 which clock was used to put John O'Keefe's phone on Oak
2 Dale Road at 2:22 a.m., that could explain --

3 MR. YANNETTI: If I may just have a moment.

4 Q It's not 2:22 --

5 A I know what you meant.

6 MR. YANNETTI: Mr. Jackson, thank you. I'm sure
7 everybody else did.

8 Q With regard to the three minute discrepancy between
9 the clocks and you've -- you've said you don't know
10 which clock Waze was using to put John O'Keefe's phone
11 on Oakdale Road at 12:22 a.m., that could explain the
12 discrepancy between the Apple Health data and the Waze
13 data, could it not?

14 A No.

15 Q But as you sit here today, you don't know whether
16 Waze was relying on the baseband display or monotonic
17 clock, correct?

18 A Again, it's not -- it can't be used for that.

19 Q Now, you're aware that Jennifer McCabe signed a
20 consent form on February 2nd of 2022, for her cell
21 phone to be imaged?

22 A Yes.

23 Q And a full forensic extraction was performed on
24 that phone sometime shortly after February 2nd of 2022?

25 A I don't remember the exact date. I didn't download

1 her phone.

2 Q But in any case, you generated a Cellebrite full
3 file system extraction report on May 31st of 2022,
4 correct?

5 A Yes.

6 Q And you were aware that that Cellebrite report was
7 the one that was turned over to the defense in this
8 case, correct?

9 A That is correct.

10 Q But you'd agree with me that that extraction report
11 didn't contain anything close to the full file system
12 despite the name on it, correct?

13 A It did.

14 Q Well that report was filtered to return only Jen
15 McCabe's communications with Carrie -- Karen Read,
16 Kerry Roberts, John O'Keefe, and (c) REDACTED
17 correct?

18 A That is not correct.

19 Q Did Michael Proctor instruct you to pull only those
20 communications?

21 MR. LALLY: Objection.

22 THE COURT: Sustained.

23 Q You didn't seek to obtain any of Jennifer McCabe's
24 communications with her sister, Nicole Albert, did you?

25 A I didn't go through. Like I said, didn't go

1 through Jen McCabe's info.

2 Q And you didn't seek to obtain any of her
3 communications with her daughter, Allie Albert, did
4 you? I'm sorry. Allie McCabe.

5 MR. LALLY: Objection. May we approach?

6 THE COURT: Sure.

7 (Sidebar commences:

8 THE COURT: So the objection?

9 MR. YANETTI: The objection, Your Honor, is that
10 what counsel has said is simply untrue. The entire
11 extraction on Ms. McCabe's phone was provided to
12 counsel. There were different grand jury exhibits that
13 parsed out specific communications, but there was also
14 a grand jury exhibit which had the entire extraction on
15 which counsel received in June of 2022, when the
16 defendant was arraigned.

17 MR. YANETTI: We're talking about the initial
18 extraction in February of 2022.

19 MR. LALLY: Correct.

20 MR. YANETTI: That's what I'm talking about.

21 MR. LALLY: Correct.

22 MR. YANETTI: So I mean that's for cross-exam --
23 for redirect.

24 THE COURT: To tell me exactly your question again.
25 I sustained it on different grounds.

1 MR. YANETTI: He didn't seek to obtain any of the
2 communications with Nicole Albert, Allie McCabe. You
3 know, I was going to ask about Brian Albert as well.

4 THE COURT: Okay. But that was after he had said he
5 didn't do anything with John O'Keefe's phone, right?
6 That's why I sustained it.

7 MR. YANETTI: No, I understand. Okay.

8 THE COURT: Okay. All right. So we'll move on.

9 MR. YANETTI: Sure.
10 end of sidebar.)

11 Q You would agree with me that the full forensic
12 image of Jennifer McCabe's phone was not shared with
13 the defense until it was requested by us in October of
14 2022, sir?

15 A That is not true.

16 Q When you wrote your report on April 24th of 2023,
17 in response to an affidavit provided by Rick Green the
18 defense forensic computer expert, it was in that report
19 that you finally disclosed for the first time the
20 existence of three Google searches by Jennifer McCabe,
21 correct?

22 MR. LALLY: Objection.

23 THE COURT: All right. So ask that differently.

24 Q Prior to April 24th of 2023, you had not reported
25 in any formal manner with anything that was shared with

1 the defense about the existence of three Google
2 searches by Jennifer McCabe, correct?

3 A I never looked at Jennifer McCabe's phone.

4 Q And so was there anybody else from your unit, or
5 anybody else that you worked on that provided that
6 material to us?

7 A Not that I know of.

8 Q Page 2, if I may just have a moment.

9 MR. YANNETTI: Your Honor, we have don't have a
10 printout, but I have --

11 THE COURT: So don't --

12 MR. YANNETTI: May I approach with that?

13 THE COURT: Approach the witness with that?

14 MR. YANNETTI: Yes.

15 THE COURT: Okay. Show it to Mr. Lally first.

16 Q So I'm going to place this before you without
17 destroying the computer.

18 A Yep.

19 Q Sorry, Trooper. Take a moment to familiarize
20 yourself with that. Do you understand or can you tell
21 the jury what that is?

22 A Yep. This is a -- did you put it in a PDF? This
23 isn't one I gave to you. This is a PDF version of the
24 UFED reader report that I gave. So I gave a portable
25 Cellebrite version to you. This is a copy of it and I

1 can't -- I will not testify that anything in this is
2 correct because this could have been filtered.

3 Q But your name is on there, is it not, sir?

4 A Yes, it is.

5 Q All right. What's the date?

6 A May 31, 2022.

7 Q Thank you. Okay. You'd agree with me with regard
8 to that April 24th of 2023, report on page 2, you
9 state, "In my initial Cellebrite UFED reader report,"
10 and then you put, "Version 7.53.0.29," that was created
11 on May 4th of 2022, the search history for Jennifer
12 McCabe's phone had two Google searches in Safari,
13 correct?

14 A Yes.

15 Q And you list out, "How long ti die in cikd," at
16 6:23:51, and "Hos long to die in cold," at 6:24:37,
17 correct?

18 A That is correct.

19 Q And by the way, with regard to the timing of those
20 two particular searches, you are aware, are you not,
21 that Jennifer McCabe placed a call to Brian Albert at
22 6:23 and zero seconds?

23 A I don't have it in front of me. I don't.

24 MR. YANNETTI: May I approach, Your Honor?

25 THE COURT: Yes.

1 A Thanks.

2 Q All right, sir, I've placed before you a document.
3 Could you familiarize yourself with that and then tell
4 the jury if you recognize what it depicts?

5 A I have a call log that says 20888 with no name at
6 6:23, that's incomplete because there should be three
7 other records accounting for this call.

8 Q Okay. But that record itself reflects a call from
9 Jennifer McCabe's phone at 6:23 and zero seconds?

10 A I don't know. There's no number on here, so I can't
11 tell that. It just says it's a call log with one call
12 that's not answered at 6:23 in the morning with doesn't
13 say who it's from or who it's going to.

14 Q Okay.

15 A It also is incomplete, because there should be two
16 other records with this. This is from the call history
17 store data WAL marked as deleted.

18 Q It's marked as deleted. Does it give a duration?

19 A It just says, "Duration. Zero seconds."

20 Q Okay. And does it reflect that it was unanswered?

21 A It does.

22 MR. YANNETTI: Okay. May I have that marked for
23 identification, please?

24 THE COURT: Okay.

25 (Whereupon Exhibit MMM, Extracted Call, was marked for

1 identification.)

2 THE COURT: Thank you.

3 Q Did you investigate whether a call was placed from
4 Jennifer McCabe to Brian Albert at 6:23 in the morning
5 and zero seconds?

6 A I didn't look at any specific calls that morning. I
7 created a Cellebrite report. That's about it.

8 Q Did you eat -- did you ask either Ian Whiffin or
9 Jessica Hyde to look into that issue?

10 MR. LALLY: Objection.

11 THE COURT: Sustained.

12 Q You would agree with me that that call and the
13 record of that deletion of that call is nowhere in your
14 April 24, report, correct?

15 A I believe it's in my May 9, report.

16 Q All right. But I asked about your April 24, report,
17 sir.

18 A I didn't address anything regarding phone calls in
19 my April 24, report.

20 Q All right. Now going back to when you began your
21 examination around May 4th of 2022, you were looking
22 for information on -- did you look on Jennifer McCabe's
23 phone back in May 4th of 2022?

24 A Did I physically open the phone or did it?

25 Q Did you review the data at all?

1 A From? I'm confused. For on the cell phone itself
2 or from the report?

3 Q Either way.

4 A No, her phone was returned to her, and then we had
5 the extraction. I did not utilize the extraction at
6 all.

7 Q You never included the two searches that we
8 discussed the, you know, "how long ti die in cikd," and
9 "hos long to die in cold," in the full file system
10 extraction that was turned over to the defense, did
11 you?

12 A They were included.

13 Q Well, page 6 of your April 24, 2023, report goes on
14 to state that when you switch to a new version of
15 Cellebrite and --

16 A Sorry.

17 Q -- that dropped out.

18 A Yeah, it was the phone call -- the power log.

19 Q Page 6 of your April 24, 2023, report says that
20 when you switch to a new version of Cellebrite Physical
21 Analyzer, which was version 7.61.0.12, you found an
22 artifact from the browser state DB WAL file for a
23 global search of "Hos long to die in cold," at 2:27 and
24 40 seconds, correct?

25 A Yes.

1 MR. YANNETTI: May I approach?

2 THE COURT: Yes.

3 Q Trooper, I'm placing before you what has been
4 marked as Exhibit 99. Do you recognize that?

5 A Yes.

6 Q And what is that?

7 A It's the searches that were done at 6:23 regarding
8 the misspelled, "how long to die in the cold."

9 Q Okay. And it's actually, "hos long to die in the
10 cold," right?

11 A Yes.

12 Q H-O-S.

13 A Yep, that was --

14 Q That was marked by Cellebrite as deleted, was it
15 not?

16 A Yes.

17 Q All right. And your April, 24 2023, report goes on
18 to mention two deleted calls to Jen McCabe's sister
19 Nicole who was saved as Coco in her phone, correct?

20 A I'd have to see it, but I believe so.

21 MR. YANNETTI: May I approach?

22 THE COURT: Yes.

23 A Thank you.

24 Q Showing you what's been marked Y for
25 identification. If you'd familiarize yourself with

1 that and look up at me when you're done.

2 A (Witness complies.) Okay.

3 Q Is -- does that show the two deleted calls to Jen
4 McCabe's sister Nicole who was saved as Coco in her
5 phone?

6 A I don't know who it's coming from, but it does say
7 it's going to Coco and then again coming from WAL
8 files, correct.

9 Q All right. And your report doesn't mention it, but
10 what was the duration of those two calls according to
11 that log?

12 A On this sheet here, it says nine seconds for the
13 first one and then seven seconds for the other.

14 Q All right. And those calls, both of them, which
15 actually had durations, were marked answered by
16 Cellebrite, correct?

17 A Yes.

18 MR. YANNETTI: May I offer that, Your Honor?

19 THE COURT: Do you have an objection?

20 MR. LALLY: It was already in, but.

21 THE COURT: I'm sorry?

22 MR. LALLY: I believe it's already --

23 THE CLERK: It's Y for identification.

24 MR. LALLY: I believe Ms. McCabe's phone calls and
25 all of that is already marked as an exhibit months ago.

1 MR. YANNETTI: Your Honor, I don't think there's
2 any harm in marking this, and I want to display it.

3 THE COURT: I'll let you display it. If it's
4 already in evidence, I just don't want duplicates.

5 MR. YANNETTI: I understand.

6 THE COURT: So without -- what I'll do is I'll let
7 you display it, and then, Mr. Lally, at some point you
8 find where this is, and we will mark this like A to
9 whatever the number is.

10 MR. YANNETTI: Thank you. All right. Mr. Bates, if
11 you could display what was marked Y for identification.

12 Q And, Trooper, with regard to what is displayed on
13 the screen now, is that consistent with what I had just
14 handed to you?

15 A Yes, it is.

16 Q All right. And with regard to the first entry
17 there, you had stated that it doesn't say -- you said,
18 it doesn't say who was making the call. Is that your
19 testimony?

20 A Yes, it just says right here.

21 Q Yep, two.

22 A I'm guessing that's the last four of the number
23 since this is the rest of blurred, and then, yeah,
24 that's it.

25 Q And you know that that oh-two-oh-four last four

1 minutes, that is to somebody who was listed as Coco in
2 the phone, correct?

3 A I don't know any of these phone numbers or people.

4 Q But you previously testified these two calls were
5 somebody -- to somebody who named Coco in the phone?

6 A Oh, yeah, from the sheet you gave me that shows it.

7 Q Okay. And the time of the first call was 6:07:42;
8 is that right?

9 A That's correct.

10 Q And you testified that that's the one that had the
11 duration of nine seconds?

12 A Yes.

13 Q Listed as answered?

14 A Correct.

15 Q And deleted, correct?

16 A Yes and no. And I can explain, if you'd like.

17 Q It's listed as deleted, is it not?

18 A There's a reason why.

19 Q Is it listed as deleted?

20 A It is. But there's a reason why.

21 Q All right. With regard to the second call that
22 appears to be to the same number or at least the same
23 last four digits?

24 A Yes.

25 Q And in the sheet in front of you, that's also to

1 Coco, correct?

2 A Yes.

3 Q And that has a time stamp of 6:08 and 17 seconds,
4 correct?

5 A That is correct.

6 Q That also has a duration, and that's of seven
7 seconds?

8 A Yes.

9 Q Also listed as answered?

10 A Yes.

11 Q And also marked deleted, correct?

12 A Yes, and there's a reason.

13 Q And are you aware that Ms. McCabe made other calls
14 that morning, which were in fact marked unanswered by
15 Cellebrite?

16 A Again, I'd have to see what you're referring to.

17 Q So as you testified to here today, you are -- you
18 have no memory as to whether or not she made a number
19 of other calls that were marked deleted, sir?

20 A There are a number of calls that morning. I have
21 not memorized all of them.

22 MR. YANNETTI: And again, Your Honor, if I may
23 approach to show something that's on a computer screen.

24 THE COURT: Okay.

25 A Thank you. Got it.

1 Q Okay. I've placed before you what appears to be a
2 PDF document on a computer screen, if you'd familiarize
3 yourself with it and look up at me when you're done.

4 A (Witness complies.) Okay.

5 Q What does that appear to be, sir?

6 A An incomplete PDF of the call logs from whoever's
7 call log this is.

8 Q Okay. And do you see in that PDF that there were a
9 number of calls that were marked unanswered by
10 Cellebrite?

11 A Again, I can't testify to any of this, because I
12 can't confirm that where this data came from. There's
13 no source file. This is completely -- it's incomplete.
14 So I do see what you're talking about in that column,
15 but I don't know where any of this data is from, or who
16 made this.

17 Q Is your name on it?

18 A At the very top, it would show my name no matter
19 what, because I created the UFED and the extraction. I
20 did not create this PDF.

21 Q Sir, the answer to my question is, your name is on
22 that document, correct?

23 A It is, but I didn't create it.

24 Q Right. And with regard to the calls that were
25 marked unanswered, would you agree with me that

1 Cellebrite had them with durations of zero seconds?

2 MR. LALLY: Objection.

3 THE COURT: Can you agree with that? Can you answer
4 that question? If you can, please answer it.

5 A With the data given here, I can't because like I
6 said I don't know -- I don't know where they got this
7 from, Your Honor.

8 Q So who created that document?

9 A I don't know.

10 Q So are you testifying that nobody in law
11 enforcement created that document or nobody -- no
12 forensic expert for the Commonwealth created that
13 document?

14 A I created the extraction and made a UFED reader
15 report which is basically a portable Cellebrite version
16 that I use at the office. I gave that to defense. I
17 don't know who created this PDF version of data with
18 specific things. I did not.

19 Q Was it Michael Proctor?

20 A No. As I said, I was the only one that created any
21 Cellebrite related reports in this case.

22 Q Well, I'd like to ask you some questions about my
23 client's cell phone, sir.

24 A Okay.

25 Q On Tuesday, when Mr. Lally was questioning you, he

1 had you point out and read some text messages that were
2 on her phone between John O'Keefe and her, correct?

3 A Those messages were taken from John O'Keefe's
4 phone.

5 Q Okay. Would you agree with me when he was pointing
6 out those text messages to you, he skipped about 40
7 pages of messages at one point?

8 A I don't know. I believe their text messages went
9 back all the way to 2020 or something ridiculous in his
10 phone.

11 Q Right. He started reading them, and he skipped
12 ahead about 40 pages, did he not?

13 A I have no idea.

14 Q Michael Proctor seized my client's phone on January
15 29th of 2022, did he not?

16 A He did.

17 Q And you would agree with me that certainly as of
18 six days later, your February 4, report, you had not
19 yet been able to access the content of the phone,
20 correct?

21 A That's not true.

22 Q At some point you were able to access the content
23 of the phone, correct?

24 A Yes. On January 31.

25 Q Of 2022?

1 A Yes.

2 Q All right. You later became aware that Michael
3 Proctor was searching through my client's phone in
4 August of '22 -- '22, correct?

5 A The actual device itself or the extraction report?

6 Q Either one, sir.

7 A I have -- I'm sorry, Miss Read's phone?

8 Q Yeah. Yeah.

9 A Yeah. We didn't --

10 Q Did you take John O'Keefe's phone?

11 A Yes, that's why I was confused. Sorry.

12 Q I apologize. I'm not trying to confuse you.

13 A Yeah.

14 Q With regard to my client's phone, which is where we
15 started --

16 A Yeah.

17 Q -- you're aware that Michael Proctor was searching
18 through her phone in August of 2022?

19 A Of the extraction report created, correct.

20 Q Were you made aware that on January 1st of 2023,
21 the defense requested a full forensic image of Karen
22 Read's phone, which was in your possession?

23 A I don't know the date, but a request was made for
24 the phone extraction, yes.

25 Q And have you seen a forensic image or Cellebrite a

1 report of the forensic image from Karen Read's phone?

2 A The redacted version that I received back from the
3 AG's office, yes.

4 Q Okay. And would you please tell the jurors how
5 many phone calls were deleted from Karen Read's phone
6 from January 29th of 2022?

7 A None.

8 Q And if you'd please tell the jurors, other than to
9 John O'Keefe, to whom did Ms. Read place phone calls
10 between 12:00 a.m. and 4:30 a.m. on January 29?

11 A Her parents twice. There -- two or three times
12 there's calls to her parents, and that's it.

13 Q And how many Google searches did she do from 12:00
14 a.m. until 5:00 a.m.

15 A I don't believe there were any.

16 Q And how many Google searches were deleted by Ms.
17 Read at any point on January 29th of 2022?

18 A I can't speak to that because we got a redacted
19 version of the report, so I don't know what was taken
20 out by the AG's office. I don't know what files they
21 went in to remove. So I only have what I was given.

22 Q Leaving that aside, sir, with regard to all of the
23 data that was provided to you, how many Google searches
24 did you see or find that Karen Read deleted from
25 January 29th of 2022?

1 A A few.

2 Q During what time period?

3 A The afternoon. But again, I -- there was artifacts
4 that I found that weren't date and time stamped, and
5 there were some that were with corresponding time
6 stamps but I can't say for sure when that was done.

7 Q Okay. But you saw no deleted calls, correct?

8 A No, not that I know of.

9 MR. YANNETTI: All right. If I may have moment?

10 THE COURT: Yes.

11 MR. YANNETTI: No further questions. Thank you.

12 THE COURT: Mr. Lally.

13 **REDIRECT EXAMINATION**

14 **BY MR. LALLY:**

15 Q Trooper Guarino, you were asked about your
16 qualifications as far as certifications that you
17 received and prior trainings, correct?

18 A Yes.

19 Q What are some of the areas that you received
20 certifications in?

21 A Cell phone -- report creation, extraction, cell
22 phone repair, the Berla motor vehicle forensics,
23 advanced database, classical casa(ph), but it's a
24 Cellebrite made class that goes deeper into the
25 database searching SQLite programming to write code to

1 do your own searches, things of that nature.

2 Q Now, at any point in time, did Trooper Proctor ever
3 tell you that he retrieved Mr. O'Keefe's cell phone
4 directly from 34 Fairview Road?

5 A No, he didn't.

6 Q Is it your understanding or subsequently, did you
7 learn that Kerry Roberts actually recovered the phone
8 from Mr. O'Keefe's body from the grass under his body
9 at 34 Fairview Road when he was placed onto a scoop
10 stretcher?

11 A I don't know who got -- recovered the phone that
12 morning, but I know --

13 MR. YANNETTI: Objection.

14 THE COURT: I'll allow it.

15 A I don't know.

16 THE COURT: So your answer is you don't know who
17 recovered it?

18 A No, I just know that it was found underneath his
19 body and then taken to Canton PD.

20 Q Now with regard to that, as far as the location
21 data post 6:15 a.m., what, if anything, did you observe
22 in reference to that?

23 A There was some intermittent native locations that
24 showed at the Canton PD. It's there for a handful of
25 different points, and then it shows it back at our

1 office when I put it into the digital evidence lab,
2 powered on to plug.

3 Q Did you receive the phone from Trooper Proctor with
4 that either in airplane mode or a Faraday bag?

5 A I don't remember offhand.

6 Q There were no locations or GPS locations that you
7 observed from the phone from that approximately 11-
8 something a.m. until you retrieved it or received it,
9 excuse me, at 7:30 p.m. on the 29th?

10 A There's like I said, there's only the handful that
11 showed it at it at Canton PD, and then when it's back
12 at the office that night. And then, if it wasn't in
13 airplane mode, it would have been something I would
14 have done. So I don't remember if Proctor did it before
15 he gave it to me, or if I did it after.

16 Q Now, the other troopers in your unit and the
17 detective unit with Norfolk DA's office, are they as
18 well versed on cell phone abstractions and cell phone
19 data as you are?

20 A No.

21 Q And so again, how many people within your specific
22 unit actually perform data extractions for a forensic
23 analysis of cell phone?

24 A Myself, Trooper Connor Keefe, and everyone has been
25 trained in how do you Cellebrite and to do these

1 extractions, they all just sort of dump them on my desk
2 and say, do this phone for me, so.

3 Q Now, as far as what you provide to the invest --
4 one of the investigating troopers, such as Trooper
5 Proctor, can you explain to the jury sort of that
6 process of how you -- what if any differences there are
7 between what you're looking at, as far as the device
8 when you're extracting the information and what you
9 provide to the trooper.

10 A So when I plug into GrayKey or Cellebrite or
11 whatever tool I'm using to extract the data, it creates
12 that ZIP file, and then I open it up in Cellebrite or
13 Axiom. The guys are only trained in Cellebrite, so
14 that's what I open the extractions initially in for
15 them. If there's something that we find that they don't
16 understand and that I want to look more into, I'll load
17 into Axiom as well. But that's normally how it would
18 go.

19 Q Now, is there any way from the version or the
20 extraction that you provide to the trooper, is there
21 any way for that or any trooper to change or manipulate
22 that data from what is initially contained on the
23 phone?

24 A Well, in essence, you could, but you'd have to go
25 in -- so once I create like that UFED reader, which is

1 the portable case, you would have to go into the
2 folders and then delete stuff, which would change all
3 of the data. And then when I would load it up later, it
4 probably wouldn't work right. That's why we saved the
5 encrypted extraction onto the server. So if anything
6 ever messes up, we can go back and reload it, and I can
7 create whatever reports I need with it.

8 Q And so from your view of the data and the phones in
9 this case, what, if anything, did you observe in regard
10 to any manipulation of data or deletion of data or
11 removal of data from what you observed?

12 A From the encrypted files that we have, none, and
13 then we didn't have pass codes for the phones, for John
14 O'Keefe's until the 31st and then again for Ms. Read's
15 until, geez, like I said, August, once the program is
16 able to open it.

17 Q Now, you were asked questions about Mr. Green's
18 affidavit. Following your review of Mr. Green's
19 affidavit, what if any steps did you take in relation
20 to what was indicated in there?

21 A So as I said, I didn't really go through the phones
22 much when we first got them. I don't know everything
23 about the case as the investigators do, so I got his
24 report, and I went through it, and basically just went
25 step by step. So he says this happened, I went to

1 confirm, and if it didn't, then I need to find out why
2 he was either incorrect or slightly off and either just
3 completely wrong or just misinterpreted the data and
4 that was it.

5 Q And in addition to yourself going through some of
6 the data, who, if anyone, did, you contact to assist or
7 to also, in addition, go through the data specifically
8 as it related to the searches for Ms. McCabe's phone?

9 A So initially when I first found it, I spoke with
10 Chris Vance of Magnet Axiom Forensics -- excuse me --
11 Magna Forensics. He's their head technical guy for
12 Axiom for -- he's like their forensic specialist. So he
13 was at the cybercrime conference. I brought him --

14 MR. YANNETTI: Objection.

15 THE COURT: I'm going to allow this.

16 A I brought the extraction there, and I said, "Hey,
17 this is what I'm seeing. This is what it parsed out.
18 Why are we seeing it marked this way?" And he goes,
19 "Well, first off, you have to look exactly where it's
20 coming from - the browser state."

21 MR. YANNETTI: Objection.

22 THE COURT: I'll strike that last part. What he
23 told you.

24 THE WITNESS: Okay.

25 A After reviewing the data, we saw that it came from

1 the browser state db file and dot WAL file, I should
2 say, at the end. So it set off a lot of red flags, and
3 then from there, we contacted Cellebrite and ultimately
4 Jessica Hyde.

5 Q And ultimately, Mr. Whiffin as well; is that
6 correct?

7 A Yes, that's -- he came in after Cellebrite. I
8 reached out to them, and they escalated it up. And he
9 reached out to us to say -- to help us.

10 Q Now, with respect to the health data that you were
11 asked about, again, if you could explain to the jury
12 when something in there in the health data says steps,
13 what exactly does steps mean?

14 A As I said before, the phone is seeing movement. It
15 doesn't necessarily mean you're taking steps. If you
16 have the iWatch paired to it, you're going to get a
17 greater level of accuracy. And I would be more apt to
18 believe that steps are being taken where it because
19 it's going to also bring your heart rate. So if you're
20 taking a large amount of steps, it's going to
21 correspond.

22 Q Now, you were asked a lot of questions on cross-
23 examination about just the health data and just the
24 health data. Why is it that you look beyond just the
25 health data?

1 A Well, you have the GPS points as well as health
2 data, and we're trying to look at everything together
3 as a whole. If we take one artifact and say, well, this
4 means this, you could have five others that disclaim
5 it, so that's why we look at all of this stuff.

6 Q Now, from that same information, as far as the GPS
7 data that indicated that Mr. O'Keefe's phone arrived at
8 34 Fairview Road at 12:25 a.m., correct?

9 A Yes.

10 Q Now, as far as the clocks or the three different
11 clocks that was presented to you that's now been marked
12 for identification, you indicated those were not
13 accurate; is that correct?

14 A Well, the file that it's coming from is not
15 accurate. So it came from a power log file that the
16 database it pulled from. So it's telling you the power
17 of the phone. So when I looked at that, that also shows
18 the battery level, and that's how I was able to show
19 that, or see, I should say, that John O'Keefe's phone
20 never turned off. It dropped down to about 17 percent
21 battery level from being under his body was actually
22 saved it from dying overnight. Then it also shows the
23 time stamps of when it gets plugged in and as it goes
24 up. That has three different time stamps. That's what
25 that is from. That is not when Waze had started. That

1 is not when the address is put in. That is strictly for
2 the power log. It has nothing to do with anything
3 else.

4 Q And so again, just sort of to that point, what if
5 any connection do those time stamps in the thing the
6 document mark for identification Mr. Yannetti showed
7 you, what if any relationship does that have to the
8 time stamps contained within either the Waze or the GPS
9 native locations or anything else that you were
10 testifying about before?

11 A It's literally showing that Waze has been opened
12 and that it's pulling power from the phone, and that's
13 -- that, is it, that is nothing else.

14 Q Now, with regard to you were asked questions about
15 Ms. McCabe signing a consent for extraction on February
16 2, 2022, correct?

17 A Yes.

18 Q And Ms. Kerry Roberts, she did the same on the same
19 date; is that also correct?

20 A Yes, I believe so.

21 Q Now, the entirety of those extractions from both
22 Ms. McCabe's phone and Ms. Roberts' phone, those were
23 both provided well in advance of the dates that counsel
24 was indicating, correct.

25 A That is correct?

1 Q Now, in regard to the Cellebrite extraction in
2 regard to Mr. Green's affidavit, Cellebrite has
3 periodically updates their -- the versions of their
4 software, correct?

5 A That is correct.

6 Q And if you could, could you speak a bit about sort
7 of the update in those versions and how that pertains
8 to this case and specifically Ms. McCabe's searches?

9 A So the initial report that I created with version
10 7.53 did not have that item to be able to be taken out.
11 I was told by Cellebrite that 7.55 was the version that
12 was enabled. Mr. Green used version 7.61, so that's why
13 he presented itself then.

14 Q May I just stop you there for one second? The
15 version that Mr. Green used, was that available at the
16 time that you did the initial extraction?

17 A No, it wasn't available for like a year later. It
18 was like ten upgrades later.

19 Q I'm sorry, sir. Continue.

20 A So again, he did the extraction. He looked at it.
21 Finds this artifact that's parsed out. And then I had
22 to go back in and scramble to say, well, why didn't I
23 see it the first time when that report -- why didn't it
24 pull? So I reloaded the 7.53 version. It's not there.
25 And then when I load it into 7.61, it is. So there's

1 just issue with the software at the time.

2 Q So, sir, with regard to those Google searches, what
3 if any opinion did you have as to when those Google
4 searches were conducted?

5 A When Ms. McCabe told us that it happened at 6:23
6 and 6:24 and then there was a third one later, at 10:35
7 that, again, if she reopened that browser window, it's
8 going to reload the search and then that was it. Those
9 are the three times that I saw in the phone extraction
10 that were real searches.

11 Q And why is it that you -- it's your opinion that
12 they occurred at 6:23 and 6:24 in the morning, and not
13 2:27?

14 A Well, it's physically impossible to search two
15 things at once. Her phone, she's searching the
16 daughter's basketball at 2:27, and then she's searching
17 "It's Raining Men" and a few other things on her phone
18 listening to music, and I think then she goes to bed a
19 few hours later. So at the -- I was told as the
20 defendant asked her to search for those terms, that's
21 when we believed that they were done.

22 Q Now, as far as WAL files or write ahead log, having
23 things listed as deleted, if you could just speak a
24 little bit more about that. As far as why would
25 something be listed as deleted in a WAL file, and what

1 does that mean?

2 A Again, the user has no input on how a WAL file is
3 deleted. It's an automated thing that the database does
4 to clean up. It just it auto deletes after either
5 programs are closed. It reaches a max data allotment
6 for that page, that is it.

7 Q And that would include any sort of call log history
8 that was contained in the write ahead log or the WAL
9 file as well?

10 A That is correct.

11 Q And so what if any opinion you have as to those
12 phone calls that you were shown in relation to the
13 contact listing Ms. McCabe's phone as Coco, as far as
14 whether or not they were user deleted?

15 A Well, again, what the defense showed me was limited
16 thing. I know there's -- should be two other locations
17 that that phone call was listed from looking at it
18 myself, so I don't know why they gave me just the two
19 deleted things, but there should be other spots in the
20 database where that phone call was there. So I don't
21 believe that it was user initiated. It was phone
22 initiated.

23 Q And that's in reference to the write ahead log sort
24 of first in/first out as far as data that comes in; is
25 that correct?

1 A That's correct.

2 Q Now, again, as far as your unit was concerned, you
3 were the only one who created any Cellebrite reports in
4 relation to any of the phones in this case with the
5 exception of the defendant's phone that was created by
6 the attorney general's office following their
7 extraction of privileged material, correct?

8 MR. YANNETTI: Objection.

9 THE COURT: So objection is sustained as to the
10 form. This seems a good place to stop. So, jurors,
11 we'll take the luncheon break. There is a chance that
12 we may be able to go a full day tomorrow. So just think
13 about that at lunch, and if there's any emergency that
14 would prevent you from being able to go a full day.

15 (Jury out.)

16 (Court in recess.)

17

18

19

20 (Court in session.)

21 (Defendant is present with counsel.)

22 (Jury in.)

23 THE COURT: All right. So jurors, when we were
24 doing scheduling, and I know scheduling has changed a
25 lot in this case. But my main goal is to get this case

1 to you folks by next week when we all want the case to
2 you by next week. So originally on the 21st, we were
3 either going to do a whole and then we couldn't do a
4 whole day, and there was all this back-and-forth, and
5 it was a half a day and it was because I had something
6 scheduled in this courthouse that was not going to be
7 continued, through forces that we weren't aware of some
8 -- it is going to be continued tomorrow. So in light of
9 that, I would like us, and we will be doing a whole
10 day. I understand that for one of you, you planned on
11 an earlier stop to the weekend or a vacation day or
12 something from the afternoon on, but really, all I'm
13 asking of you is to go from instead of a one o'clock
14 stop to a four o'clock stop, and where, I guess,
15 fourteen of you are able to do that, we're going to do
16 that. So tomorrow will be a full day. I don't know who
17 I'm inconveniencing but I apologize for that. Because
18 when I said emergency, an early start for the weekend
19 was not an emergency.

20 All right. Could we call the witness back, please.

21 THE CLERK: Trooper, same thing. Just be mindful
22 of the step up and you remain under oath.

23 THE WITNESS: Thank you.

24 THE COURT: All right. Mr. Lally.

25 MR. LALLY: Thank you, Your Honor.

1 Q (By Mr. Lally) Good afternoon, sir.

2 A Good afternoon.

3 Q So with reference to this case, this investigation,
4 who, if anyone besides you, created any Cellebrite
5 reports or extractions from any of the phones involved
6 in this case?

7 A Other than the AG's office, it was just myself.

8 Q And now you had mentioned that there was some
9 deleted material from the defendant's phone from the
10 afternoon of January 29, 2022; is that correct?

11 A Yes, that's correct.

12 Q And what was that that was deleted?

13 A There was some search items that were not there in
14 the phone, but found cookies related to said searches
15 and websites visited.

16 Q So as far as search terms or web history, were
17 those the areas that were deleted?

18 A Yes, that's correct.

19 MR. LALLY: I have nothing further, Your Honor.

20 THE COURT: Oh, okay,

21 MR. YANNETTI: Nothing further. Thank you.

22 THE COURT: Okay. So we brought you back for that,
23 Trooper. Thank you very much.

24 THE WITNESS: Thank you.

25 THE COURT: All right.

1 THE WITNESS: Thank you. Your next witness, Mr.

2 Lally.

3 (End of witness testimony.)

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

C E R T I F I C A T I O N

I, CHRISTINE D. BLANKENSHIP, NOTARY PUBLIC, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND ACCURATE TRANSCRIPT FROM THE RECORD OF THE COURT PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

I, CHRISTINE D. BLANKENSHIP, FURTHER CERTIFY THAT THE FOREGOING IS IN COMPLIANCE WITH THE ADMINISTRATIVE OFFICE OF THE TRIAL COURT DIRECTIVE ON TRANSCRIPT FORMAT.

I, CHRISTINE D. BLANKENSHIP, FURTHER CERTIFY THAT I NEITHER AM COUNSEL FOR, RELATED TO, NOR EMPLOYED BY ANY OF THE PARTIES TO THE ACTION IN WHICH THIS HEARING WAS TAKEN, AND FURTHER THAT I AM NOT FINANCIALLY NOR OTHERWISE INTERESTED IN THE OUTCOME OF THIS ACTION.

Christine D. Blankenship, December 11, 2024

CHRISTINE D. BLANKENSHIP, NOTARY PUBLIC
29B MECHANIC STREET
FOXBORO, MASSACHUSETTS 02035
(508) 904-9508
C.DORANBLANKENSHIP@GMAIL.COM